

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 27, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 98OD-017

OAHU

Request to Amend Prior Board Action of February 26, 1999  
(Item D-14) Concerning Acquisition of Private Lands and Set  
Aside to the Hawaii State Judiciary for Development of the  
Kapolei Judiciary Complex in the City of Kapolei, Island of  
Oahu. Tax Map Key: 9-1-16: Por. 1.

APPLICANT AGENCY:

Department of Accounting and General Services on behalf of the  
Hawaii State Judiciary.

AREA:

15.274 acres, more or less, subject to terms and conditions  
described herein.

ZONING:

State Land Use District: Urban  
City & County of Honolulu: BMX-3, Commercial

CONSIDERATION:

Private landowner is donating the greater portion of the subject  
lands at no cost to the State.

The remainder of the subject lands will be subject to negotiation  
for purchase by the State from the private landowner for a one-  
time payment to be determined by independent or staff appraiser,  
subject to terms and conditions described herein, and to review  
and approval by the Chairperson.

REMARKS:

Historical Background

On September 23, 1988, the State of Hawaii Land Use Commission entered Findings of Fact, Conclusions of Law and Decision and Order (the "1988 LUC D&O") which approved a petition from the Estate of James Campbell (the "Estate") to amend the Land Use District boundary to reclassify approximately 890 acres of land in Ewa, Oahu, from agricultural to urban district in order to develop Kapolei.

One of the preconditions of the reclassification required the Estate to execute an agreement or document evidencing its commitment to provide 40 acres to the State, at no cost, for governmental offices or other public facilities, with all off-site costs to be borne by the Estate. To satisfy this precondition, the Estate executed a Document Evidencing Petitioner's Commitment, dated April 11, 1989 ("the 1989 Document"), in which the Estate agreed to convey 40 acres to the State on an incremental basis subject to the State entering into construction agreements within ten years of the date of the 1989 Document.

At its meeting on September 9, 1994 (Agenda Item F-12), the BLNR approved, in principle, the 1988 LUC D&O and, in principle, one or more side agreements regarding the transfers, development and use of land to be donated by the Estate. At its meeting of October 14, 1994 (Agenda Item F-11), the BLNR approved a letter agreement, dated September 14, 1994 (the "September 1994 Letter Agreement"), in which the Estate and the State identified the location of the 40 acres to be conveyed to the State and set out additional terms and conditions for such conveyances, including that the State construct improvements on the conveyed land that met certain floor area ratio ("FAR") density requirements.

Subsequent amendments to the September 1994 Letter Agreement were approved by the BLNR on February 26, 1999 (Agenda Item D-14), and were set forth in an amended letter agreement dated June 30, 1998 (the "June 1998 Letter"). The June 1998 Letter identified two parcels (Parcels 4 and 5) that would be conveyed to the State for a family court center and juvenile detention center, subject to certain terms and conditions. The June 1998 Letter required the State's improvements on Parcels 4 and 5 to meet a 0.39 FAR density requirement. The June 1998 Letter also extended the time for the State to meet the conditions for conveyance of Parcels 4 and 5 to December 31, 2006. Although the June 1998 Letter was never fully executed, both parties have continued to move forward towards the conveyance of Parcels 4 and 5 to the State for the Kapolei Judiciary Complex.

### Proposed Letter Agreement

In 2005 the Judiciary obtained a legislative appropriation of \$95 million to construct the Kapolei Judiciary Complex on Parcels 4 and 5. Based on this appropriation, the State began negotiations with the Estate to update the June 1998 Letter and to clarify certain terms and conditions contained therein.

By 2006, due to unexpected increases in the cost of construction, the State determined that it had insufficient funds to build a Kapolei Judiciary Complex on Parcels 4 and 5 that would meet the 0.39 FAR density requirement. The Judiciary returned to the Legislature to request an additional appropriation to fund these cost increases. However, the Judiciary received instead a \$6 million appropriation for the purchase of any part of Parcels 4 and 5 that would not be conveyed to the State because of an inability to meet the 0.39 FAR density requirement and still stay within the existing budget.

In light of the foregoing, the State and Estate have recently updated the June 1998 Letter. The updated terms and conditions of the conveyance of Parcels 4 and 5 (nka "Lot 80001-C-1") to the State are set forth in a proposed letter agreement, dated October \_\_, 2006, attached hereto as Exhibit B, which, if approved, shall supersede the June 1998 Letter and the September 1994 Letter Agreement. Note that since Lot 80001-C-1 will or has been transferred by the Estate to one of its successors, Kapolei Property Development LLC ("KPD"), KPD is also a party to the proposed letter agreement.

The proposed letter agreement provides for KPD to convey as much of Lot 80001-C-1 as the State has funding to build a court building, juvenile detention center and ancillary central plan structures (the "Required Improvements") that meet the 0.39 FAR density requirement. The conveyance is subject to: (i) the Estate and/or KPD obtaining approval of the subdivision of the land to be conveyed to the State; (ii) the State entering into a construction agreement for the Required Improvements, and (iii) State funds being appropriated and certified as available for that construction agreement. Under the proposed letter agreement and an earlier letter from the Estate, the State has until June 30, 2007 to meet conditions (ii) and (iii) above. If the State is able to negotiate the purchase of the part of Lot 80001-C-1 not conveyed to the State due to inability to meet the 0.39 FAR density requirement (currently estimated at 4.4 acres), the Estate has agreed to reduce the FAR density requirement for the entire Lot 80001-C-1 (15.274 acres) to 0.37.

The Estate has received preliminary approval of the subdivision of Lot 80001-C-1 from the City and County of Honolulu Department of Planning & Permitting (DPP), and final approval is pending.

The form of the limited warranty deed for the conveyance, and the

supplemental declaration and amendments to the declaration of protective covenants, conditions and restrictions have been negotiated to the mutual satisfaction of the Estate, the Judiciary, DAGS, and the Attorney General. These are attached as exhibits to the proposed letter agreement subject to Board approval.

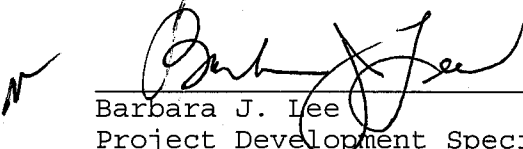
If approved, the proposed letter agreement dated October \_\_, 2006, shall supersede the June 1998 Letter, as well as the September 1994 Letter Agreement. A summary of the material changes between the June 1998 Letter and the proposed letter agreement are set forth in the attached Exhibit A. A redlined version of the proposed letter agreement is also attached hereto as Exhibit C.

**RECOMENDATION:**

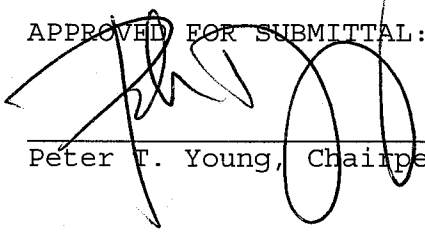
That the Board:

1. Approve the proposed letter agreement dated October \_\_, 2006, and the exhibits attached thereto;
2. Authorize the Chair, after consultation with the Judiciary, DAGS and the Department of the Attorney General, to negotiate any further modifications or amendments to the proposed letter agreement with respect to Lot 80001-C-1 so long as such modifications or amendments are not materially inconsistent with the terms and conditions set forth in the proposed letter agreement approved by the Board;
3. Subject to the foregoing, authorize the Chair to execute the proposed letter agreement and any further modifications or amendments to the proposed letter agreement, and to execute all documents and instruments and to perform all other actions as are reasonably necessary to implement the final form of the proposed letter agreement.

Respectfully Submitted,

  
\_\_\_\_\_  
Barbara J. Lee  
Project Development Specialist

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

10/27/06 BLNR SUBMITTAL "EXHIBIT A":  
SUMMARY OF 10/27/06 MATERIAL CHANGES TO LETTER AGREEMENT

## SUMMARY OF 10/27/06 MATERIAL CHANGES TO LETTER AGREEMENT

Material changes between the June 1998 Letter and its attached exhibits and the proposed letter agreement dated October \_\_, 2006, and its exhibits are listed below.

### Proposed Letter Agreement

In preparation for its planned dissolution, the Estate of James Campbell (the "Estate") will or has transferred lands (including the subject property) to one of its successor entities, Kapolei Property Development LLC (KPD). As such KPD is now a party to the proposed letter agreement.

1. Designation of State Land. Lot 80001-C-1 (previously called Parcels 4 and 5) was found to have a size of 15.274 acres rather than 13.5 acres and the letter agreement has been amended accordingly.
2. Conveyance of Land. Since the State will not be pursuing a conveyance of the subject land through a developer selected by the Estate or a financing agreement under HRS Chapter 37D, these alternative methods of conveyance have been taken out of the proposed letter agreement. The conditions that the State has to meet to obtain conveyance of the property are now entry into a construction agreement for a court building, juvenile detention center and ancillary central plan structure (the "Required Improvements") having a FAR of 0.39 and State funds being appropriated and certified as available for that construction agreement. The location of access easements to be granted to the State has been changed to meet the State's present design requirements.
3. Alternate Site Configuration. This new paragraph provides for the State to acquire a smaller part of Lot 80001-C-1 due to the lack of sufficient funding to construct Required Improvements on the entire property that meet the 0.39 FAR density requirement. Since the smaller part of Lot 80001-C-1 has to be subdivided in order to convey it to the State, this paragraph provides for KPD to bear the costs of such a subdivision (excepting internal State costs). To enable the State to begin construction prior to DPP approval of the smaller subdivision, this paragraph provides for KPD to convey the entire Lot 80001-C-1 (15.274 acres) to the State with the State agreeing to later re-convey the portion that it is not entitled to under the terms of the letter agreement. To accommodate the State's desire to begin construction as soon as possible, the letter agreement also provides for KPD to grant a construction right of entry, upon mutually agreeable terms and conditions.
4. Lot 80001-C-1 Improvements (formerly titled "Parcels 4 and 5 Improvements"). The improvements to or for Lot 80001-C-1 to be provided by KPD have been clarified, i.e., drainage, water and sewer

**EXHIBIT A**

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lines (together with laterals and points of connection), and a utility conduit system for electrical, telephone and cable television lines (together with points of connection).

5. Phase 1 Environmental Site Assessment. This new paragraph notes that the Estate, at its own expense, provided to the State a Phase 1 Environmental Site Assessment dated August 4, 2005 for Lot 80001-C-1 that states there were no recognized environmental conditions identified.

#### **Exhibit A**

New map showing increased size, changed location of access easements, and more detail of Lot 80001-C-1 (formerly Parcels 4 and 5).

#### **Exhibit A-1**

New map showing smaller part of Lot 80001-C-1 to be conveyed for construction of Kapolei Judiciary Complex to the State due to lack of funding and the 0.39 FAR density requirement.

#### **Exhibit B - Limited Warranty Deed**

The deed now shows that the Grantor conveying the property to be Kapolei Property Development LLC and not the Estate.

The deed now conveys different access easements in accordance with State's current plans.

Property description attached as Exhibit "A" now identifies Lot 80001-C-1 with a corrected area of 15.274 acres. Property is now identified as being subject to: (a) various supplements and amendments to the City of Kapolei Declaration of Protective Covenants, Conditions, and Restrictions; (b) a Unilateral Agreement and Declaration for Conditional Zoning, dated November 17, 2004; and (c) a Grant of Non-Exclusive Easements in Favor of the City and County of Honolulu and the Board of Water Supply, dated December 30, 2004. Items in (a), (b), and (c) have been reviewed by the Judiciary, DAGS and Attorney General none of whom have identified anything materially inconsistent with what was in Exhibit "A" to the Limited Warranty Deed attached to the June 1998 Letter.

#### **Exhibit C-1**

New map showing easements affecting Lot 80001-C-1.

#### **Exhibit C-2 - Lot 80001-C-1 Off-Site Improvements**

2.a. Paved Access. Estate/KPD no longer agree to construct that portion of Kapolei Parkway that runs along the northern boundary of Lot 80001-C-1. However, the State now has access to the Kapolei Judiciary Complex coming from the Kamokila Boulevard side of the

## **EXHIBIT A**

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property and KPD will be providing access, curb cuts, driveway aprons, and sidewalks on that side of the property. This paragraph now also provides that any entity constructing Waianiani Way shall provide certain access improvements on that side of the property.

2.c. Potable Water and Sewer Service. This paragraph clarifies the terms and conditions under which KPD will provide water and sewer lines to Lot 80001-C-1. While the State will not be required to reimburse KPD for water source, storage, and transmission charges, it will be required to pay for the allocation of sewer transmission capacity at City standard rates.

2.f. Traffic Improvements. Under this new paragraph, KPD will be required to make certain traffic improvements as were recommended in the State's traffic study.

#### **Exhibit C-3**

New map showing access to the Kapolei Judiciary Complex from Kamokila Boulevard.

#### **Exhibit D - Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions**

As a result of an assignment, the Declarant is now shown as Campbell Hawaii Investor LLC and Kapolei Property Development LLC is shown as the Consenting Party.

While there have been a number of minor changes to this instrument, the Judiciary, DAGS, and Attorney General have each reviewed this instrument and identified no changes that would be materially inconsistent with Exhibit D (Fourth Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions) attached to the June 1998 Letter.

## **EXHIBIT A**

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10/27/06 BLNR SUBMITTAL "EXHIBIT B":  
LETTER AGREEMENT DATED OCTOBER \_\_, 2006

October \_\_, 2006

Mr. Thomas R. Keller  
Administrative Director of the Courts,  
State of Hawaii  
417 South King Street  
Honolulu, Hawaii 96813

Mr. Peter T. Young  
Chairperson  
Department of Land and Natural Resources,  
State of Hawaii  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Mr. Russ K. Saito  
State Comptroller  
Department of Accounting and  
General Services, State of Hawaii  
P. O. Box 119  
Honolulu, Hawaii 96810

Gentlemen:

Re: State/Campbell Estate Agreement dated  
September 14, 1994 - Kapolei Judiciary Complex

I am writing to you on behalf of the Estate of James Campbell (the "Estate") and Kapolei Property Development LLC, a Hawaii limited liability company ("KPD") in reference to that certain letter agreement dated September 14, 1994 (the "September Letter Agreement") regarding the Estate's obligations to provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations in Kapolei to be used for governmental offices or other public facilities.

On September 23, 1988, the State of Hawaii Land Use Commission ("LUC") entered Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") which granted the Estate's petition to amend the Land Use District boundary to reclassify approximately 890 acres of land situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii, from the Agricultural District to the Urban District to develop Kapolei. The Decision and Order contained a number of pre-conditions which were more particularly described in that certain Document Evidencing Petitioner's Commitments dated April 11, 1989. These conditions included the 40-acre obligation described above.

In the September Letter Agreement, the State and the Estate identified the locations of the 40 acres which will satisfy one of the pre-conditions including Parcels 4 and 5, containing an aggregate area of approximately 13.5 acres, to be used for the Kapolei Judiciary Complex. The State and the Estate proposed to enter into a new letter agreement dated June 30, 1998, (the "June 1998 Letter") covering specifically Parcels 4 and 5, which would supersede the September Letter Agreement as to the terms and conditions pertaining to Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6.

The June 1998 Letter was submitted to the Board of Land and Natural Resources for approval. On February 26, 1999, the Board approved the June 1998 Letter as agenda Item D-14. Due to the passage of time since the June 1998 Letter was approved, and

there being further clarification and modifications to the June 1998 Letter, the parties now wish to update and restate the terms and conditions under which Parcels 4 and 5 would be conveyed to the State for the Kapolei Judiciary Complex.

The amended terms and conditions set forth herein regarding Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6 supersede those in the September Letter Agreement and the June 1998 Letter. For the convenience of the parties, these amended terms and conditions are restated and set forth in their entirety as follows:

1. Designation of State Land. The forty (40) acres of land to be provided by the Estate to the State shall include the land designated as Lot 80001-C-1 (formerly Parcels 4 and 5) on Exhibit "A" attached hereto and incorporated herein by reference on the terms and conditions more particularly set forth below. Lot 80001-C-1 is currently owned by KPD. Lot 80001-C-1 contains an increased area of 15.274 acres. As a result, the remaining lands to be provided by the Estate and designated as Parcels 2 and 6 in the September Letter Agreement will be reduced in size so that the total area provided to the State does not exceed 40 acres in total.

2. Conveyance of Land. Subject to the satisfaction of the terms and conditions of this agreement, Lot 80001-C-1 will be conveyed upon the State's request, but no later than sixty (60) days after the subdivision of Lot 80001-C-1 has been completed as set forth below and the State has entered into a construction agreement for a court building and juvenile detention facility (including ancillary central plant structures) to be constructed on Lot 80001-C-1 with a floor area ratio as defined in the Land Use Ordinance of the City and County of Honolulu ("FAR") of not less than 0.39 (the "Required Improvements") and State funds have been appropriated and have been certified as available for said construction agreement. Notwithstanding the foregoing, however, if Lot 80001-C-1 is not used by the State for a court building and a juvenile detention facility (including ancillary central plant structures), the density of the buildings constructed on Lot 80001-C-1 shall have a FAR of not less than 0.5 and the definition of "Required Improvements" shall be modified accordingly. The Required Improvements shall be designed by the State. Subject to the provisions of paragraph 3.a below, the obligation to make a conveyance of Lot 80001-C-1 shall terminate as provided in paragraph 3 below if the State has not entered into a construction agreement to build the Required Improvements or State funds have not been appropriated and certified as available to pay for the cost of such construction. Such conveyance shall also be subject to the receipt of subdivision approvals from the City and County of Honolulu and the filing of the required subdivision map with the Land Court of the State of Hawaii, all of which will be completed by the Estate and/or KPD at their sole cost and expense. If KPD has not obtained subdivision approval of Lot 80001-C-1 from the City and County of Honolulu by June 30, 2007, or such other date as may be mutually agreed upon by the parties to this letter agreement, KPD will pursue obtaining subdivision approval on a substitute parcel or parcels mutually agreeable to the parties, and said parcel or parcels shall be conveyed to the State on terms and conditions substantially equivalent to those governing the conveyance of Lot 80001-C-1, provided that the State will be given a reasonable period of time to redesign the Required Improvements, obtain any required State funding, and enter into the required construction agreement. The conveyance of Lot 80001-C-1 will be made by means of a limited warranty deed substantially in the form of Exhibit "B" attached hereto and incorporated herein by reference, together with non-exclusive easements for access purposes over Easements "1" and "2" as shown on Exhibit "C-1" attached hereto and subject to (i) the City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions described in paragraph 6 below, (ii) all liens and

encumbrances shown on Exhibit "A" to the limited warranty deed, and (iii) encumbrances imposed as the result of the required subdivision. The State's right to use Easement "1" will terminate upon the dedication of Easement "1" as a public roadway. The State's rights to use Easement "2" will terminate upon the completion of the construction of roadway improvements therein and the dedication of Easement "2" as a public roadway.

3. Alternate Site Configuration. The State has determined that the projected costs of constructing the Required Improvements exceed the amount of the appropriation approved by the Hawaii State Legislature in the 2005 legislative session. Based on the amount currently appropriated, the State cannot meet the 0.39 FAR density requirement of 259,481 square feet for the Required Improvements to be built on Lot 80001-C-1 unless approximately 4.40 acres of Lot 80001-C-1 is retained by KPD. While the State obtained an appropriation of \$6.0 million in the 2006 legislative session with which to acquire all of Lot 80001-C-1, the State may not be successful in reaching agreement with KPD on such acquisition. As a result, the State and KPD further agree as follows:

a. If the State is not successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1, KPD agrees to convey, and the State agrees to accept, less than the entire 15.274 acres of Lot 80001-C-1. The parties agree that the amount of acreage to be conveyed to the State shall be the maximum number of acres of Lot 80001-C-1 as to which the State has funding to build a court building and juvenile detention center (including ancillary central plant structures) that meet the 0.39 FAR density requirement (the "Modified Required Improvements"). In decreasing the size of the property to be conveyed to the State, the property shall be decreased on the Kapolei Parkway/Waianiani Way side of Lot 80001-C-1 as shown on Exhibit "A-1" attached hereto and incorporated herein by this reference. Thereafter, the term "Lot 80001-C-1" will refer to the smaller parcel to be conveyed to the State. As set forth above, the State shall be entitled to this conveyance (i) after the new lots have been subdivided, (ii) the State has entered into a construction agreement for the Modified Required Improvements, and (iii) State funds have been appropriated and are certified as available for said construction agreement. KPD's obligation to convey the property shall cease if the State fails to meet conditions (ii) and (iii) on or before midnight on June 30, 2007. If the new subdivision of Lot 80001-C-1 in order to create the smaller parcel to be conveyed to the State cannot be completed by June 30, 2007, KPD will convey all of Lot 80001-C-1 to the State subject to the State's agreement and unconditional obligation to reconvey to KPD the land to be retained by KPD after the new subdivision is completed. KPD shall complete the required subdivision and the schedule for completing the subdivision and reconveyance shall be determined by KPD in its sole discretion. The State shall cooperate with KPD in connection with completing the subdivision and the reconveyance, and will promptly execute any applications, agreements or other documents required for the same. KPD shall bear all of the third party, out-of-pocket costs and expenses of reconveying the land to be retained by KPD including the responsibility for completing the subdivision required to effectuate the reconveyance and paying all third party, out-of-pocket costs and expenses for such subdivision.

b. If the State is successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1 and expands the Kapolei Judiciary Complex in the future to include permitted improvements on the additional 4.40 acres of Lot 80001-C-1, KPD agrees that the density requirement for the 15.274 acres taken as a whole shall be reduced to 0.37 FAR.

c. In order to accommodate the State's desire to begin construction as soon as reasonably possible, upon the State's request, KPD will enter into one or more Construction Right of Entry agreements with the State's contractors for the construction of the Required Improvements or Modified Required Improvements, as the case may be, provided that: (i) the subdivision of Lot 80001-C-1 (15.274 acres) has been approved by the City and County of Honolulu; (ii) the State has entered into the construction agreement for the Required Improvements or Modified Required Improvements, as the case may be; and (iii) State funds have been appropriated and certified as available for said construction agreement. The Construction Right of Entry shall be in a form mutually agreeable to KPD and the State.

4. Lot 80001-C-1 Improvements. KPD will provide drainage, water and sewer lines (together with laterals and points of connection as shown on KPD's construction plans) and a utility conduit system for electrical, telephone and cable television lines (together with points of connection as shown on KPD's construction plans) for Lot 80001-C-1 as set forth in the conceptual plan attached hereto as Exhibit "C-1" and incorporated herein by reference, which plan may be revised by KPD. It is understood and agreed that KPD will consult with the State prior to making any revisions to the conceptual plan and/or points of connection that materially adversely change the location or nature of the drainage, water and sewer lines, and/or the conduit system for electrical, telephone and cable television lines serving Lot 80001-C-1 as shown on Exhibit "C-1". KPD has provided or will provide, at its own cost and expense, paved access, drainage, water and sewer lines and other utilities and improvements for Lot 80001-C-1 as more particularly described in Exhibit "C-2" attached hereto and incorporated herein by reference. KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. If the construction of the Kapolei Parkway extension along the northerly boundary of Lot 80001-C-1 is completed by KPD or KPD's assignee and causes damage to any landscaping, berm or other improvements on Lot 8001-C-1, KPD or its assignee shall restore the same at its expense.

5. Permitted Uses. KPD and the State agree that Lot 80001-C-1 shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on Lot 80001-C-1. The term "governmental offices or other public facilities" may include, among other things, a court building and juvenile detention facility (including ancillary central plant structures).

6. City of Kapolei Declaration. The Land will be conveyed to the State subject to that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, filed in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 34321422 and 3449337, respectively, and by that certain Supplemental Declaration To City of Kapolei Declaration of Protective Covenants,

Conditions and Restrictions substantially in the form attached hereto as Exhibit "D" and incorporated herein by reference, as the same may be amended from time to time in the future both prior to and after the conveyance of Lot 80001-C-1 to the State (the "Declaration"), which Declaration, as to the matters set forth therein, supplements and completely supersedes the corresponding provisions of the September Letter Agreement as to Lot 80001-C-1. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. The State further agrees to use reasonable efforts to comply with the Signage Guidelines attached as Exhibit "G" to the Declaration subject to such modifications as are consented to by the Estate, which consent shall not be unreasonably withheld.

7. Phase 1 Environmental Site Assessment. The Estate, at its expense, has obtained and delivered to the State a Phase 1 Environmental Site Assessment for Lot 80001-C-1 dated August 4, 2005 prepared by Tetra Tech EM Inc. The Site Assessment states that no recognized environmental conditions were identified on Lot 80001-C-1. Any additional environmental investigations shall be completed at the expense of the State.

8. City of Kapolei Improvements. As set forth in the limited warranty deed attached hereto as Exhibit "B", KPD has agreed to limit its right to construct improvements within Lot 80001-C-1 for the benefit of the City of Kapolei or Lot 80001-C-1 to Easement 6170, for nonpotable water utility purposes, and Easement 70002, for landscaping and utility purposes, as shown on Exhibit "A". The State shall have the right to review and comment on the improvements prior to their construction, and KPD shall reasonably coordinate the location and construction of said improvements with the State.

9. Landscaping. KPD or the City of Kapolei Community Association shall irrigate (until the conveyance of Lot 80001-C-1 to the State) and maintain: (a) the street trees planted by KPD in accordance with the Street Tree Master Plan shown in the City of Kapolei Urban Design dated June 1998, if a landscaping easement is granted by the State for such purpose; and (b) the trees in the planting easement(s) shown on the parcel maps. Except in the case of emergencies or health or safety concerns, the State may not cut down, remove or relocate such street trees without obtaining KPD's prior written consent. The Estate shall plant such street trees along the extension of Kamokila Boulevard as set forth in Exhibit "C-2" when such extension is completed. KPD acknowledges that the State may use St. Augustine grass for ground cover within Lot 80001-C-1.

10. Parking. If only two buildings are constructed on Lot 80001-C-1, parking may be on-grade asphalt. If more than two buildings are constructed on Lot 80001-C-1, the State agrees to provide one level of parking under each additional building on Lot 80001-C-1, and the remainder of the required parking for each additional building shall be on-grade asphalt located temporarily on Lot 80001-C-1 next to each building with appropriate landscaping. It is understood and agreed that the State's construction of ancillary central plant structures for its court building and juvenile detention facility shall not be considered a third building for purposes of this paragraph. Within ten (10) years of occupancy of each additional building on Lot 80001-C-1, the State shall, subject to funding availability, replace the temporary parking with:

a. Underground parking facility(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

b. Above ground parking structure(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

c. A remote park and ride facility on other lands owned by the State.

11. Assignment by KPD. The State acknowledges and agrees that Lot 80001-C-1 and/or certain adjacent and nearby lands may be transferred by KPD to the James Campbell Company LLC, a Delaware limited liability company ("JCC"), or to another affiliate of KPD or JCC and that KPD may assign this letter agreement to JCC or another affiliate of the KPD or JCC in connection with such transfer(s) with the consent of the State, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment to JCC or any such affiliate, and the assumption by JCC or any such affiliate of KPD's obligations under this letter agreement, KPD shall have no further liability under this letter agreement provided that the assignee assumes and agrees to perform all of KPD's obligations under this letter agreement.

12. Exhibits. All Exhibits referred to in this letter agreement shall be deemed to be incorporated herein by the reference made to them as fully as though the entire Exhibit were set forth within the body of this Agreement itself.

13. Notices. All communications hereunder will be in writing and shall be deemed duly communicated when sent by certified or registered mail, postage prepaid, addressed:

**If to the Estate:**

The Estate of James Campbell  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: Chief Executive Officer

**with a copy to:**

Carlsmith Ball LLP  
2200 American Savings Bank Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand, Esq.

**If to KPD:**

Kapolei Property Development LLC  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: President

**with a copy to:**

Carlsmith Ball LLP  
2200 American Savings Bank Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand, Esq.

**If to the State:**

Administrative Director of the Courts  
State of Hawaii  
417 South King Street  
Honolulu, Hawaii 96813

Comptroller  
Department of Accounting and  
General Services  
State of Hawaii  
1151 Punchbowl Street, Room 410  
Honolulu, Hawaii 96813

**with copies to:**

Chairman  
Department of Land and Natural Resources  
State of Hawaii  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813

Department of the Attorney General  
Land/Transportation Division  
465 South King Street, Room 300  
Honolulu, Hawaii 96813  
Attention: Supervising Attorney

or, in each case, to any address as may hereunder have been designated most recently. Any communications so mailed shall be deemed delivered four (4) business days after mailing.

14. No Party Deemed Drafter. No party shall be deemed the drafter of this agreement. If this agreement is ever construed by a court of law, such court shall not construe this agreement or any provisions hereof against any party as drafter.

15. Binding Effect. This agreement and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors, successors in trust and permitted assigns of the parties hereto. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees Under the



Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and its successors, successors in trust and assigns, and not the personal liability of any trustee, officer or employee of the Estate of James Campbell.

16. Estate Authority. This agreement is subject to the approval of the Trustees Under the Will and of the Estate of James Campbell, Deceased.

17. Time of the Essence. Time is of the essence of this agreement.

18. Governing Law. This agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

19. Paragraph Headings. The use of any pronoun herein shall include any and all pronouns and the singular shall include the plural and vice versa, as the context may require. Paragraph headings are inserted only for convenience in reference.

20. Counterparts. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

21. Entire Agreement. This agreement and the Exhibits attached hereto are intended to clarify that certain Document Evidencing Petitioner's Commitments dated April 11, 1989, supersedes the September Letter Agreement and the June 1998 Letter Agreement as to Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6, and constitute the entire agreement of the parties with respect to the matters set forth herein regarding Parcels 4 and 5, now Lot 80001-C-1, and the acreage to be included in Parcels 2 and 6.

22. Amendments. Any amendments to this agreement shall be in writing and signed by the parties hereto.

[Remainder of this page left intentionally blank.]

If the foregoing correctly sets forth the agreements we have reached, please sign the enclosed copy of this letter in the space provided below and return it to the undersigned.

Very truly yours,

Steven H. MacMillan  
Chief Executive Officer

APPROVED:

**TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF JAMES CAMPBELL,  
DECEASED**, acting in their fiduciary and not in  
their individual capacities

Approved as to Form  
Carlsmith Ball LLP

By \_\_\_\_\_

**KAPOLEI PROPERTY DEVELOPMENT LLC**

By Aina Nui Corporation, a Hawaii corporation,  
its member manager

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed and accepted:

THE JUDICIARY, STATE OF HAWAII

By \_\_\_\_\_  
Thomas R. Keller  
Administrative Director of the Courts

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan Gochros  
Judiciary Staff Attorney

BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Peter T. Young  
Its Chairperson

APPROVED AS TO FORM:

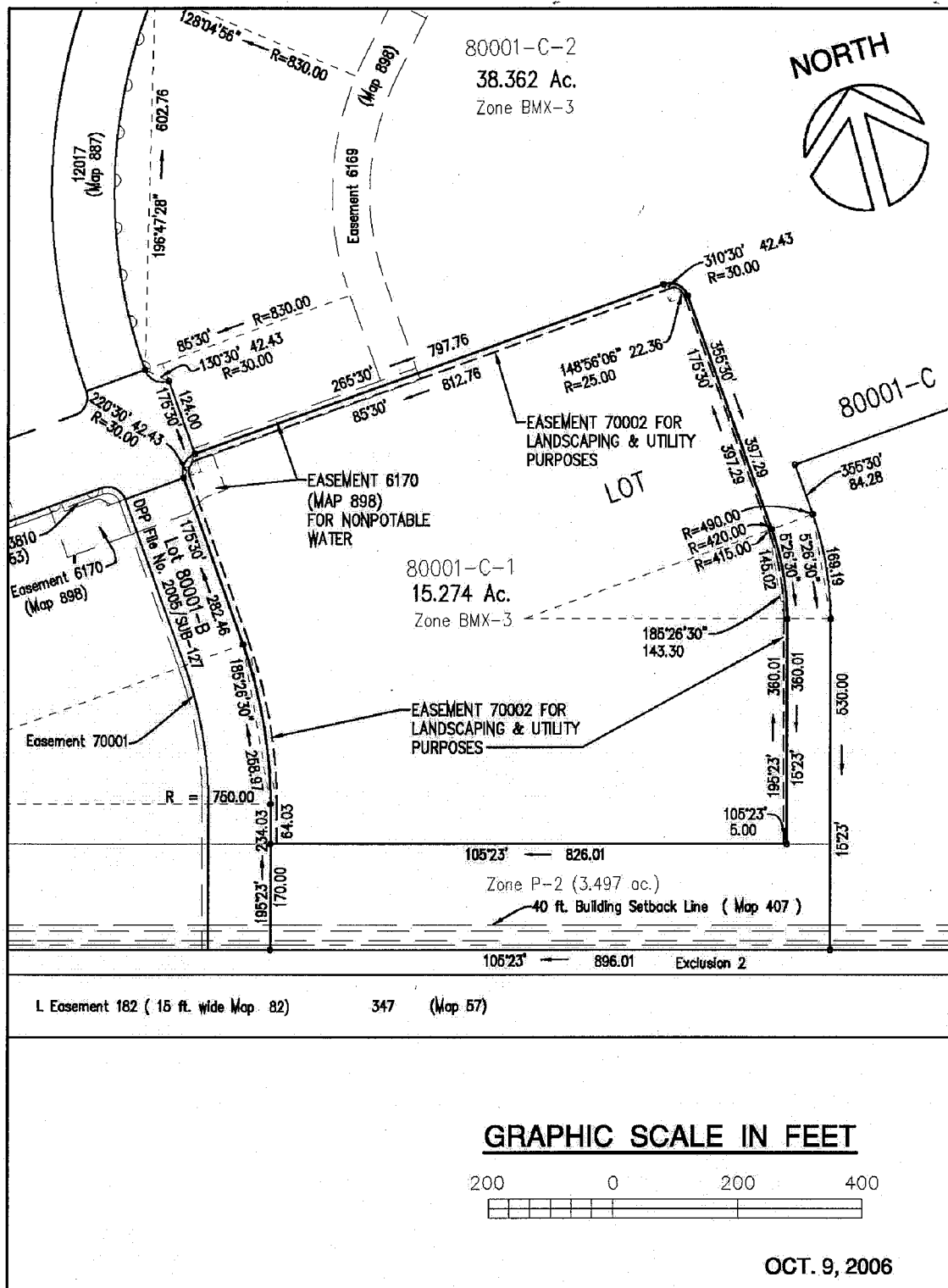
\_\_\_\_\_  
Deputy Attorney General

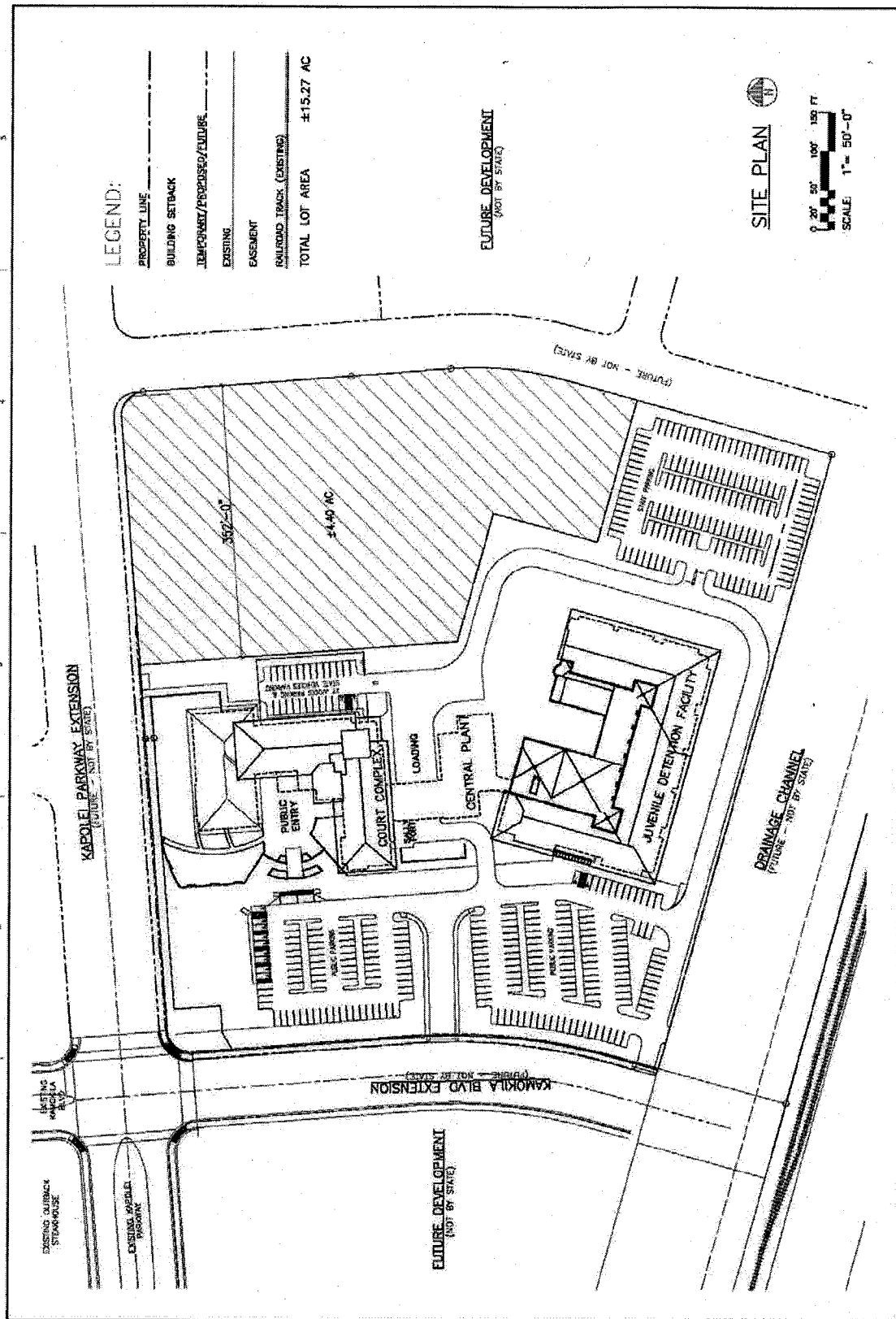
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES

By \_\_\_\_\_  
Russ K. Saito  
Its Comptroller

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General





4839-8549-8368.51.054438-00062  
DRAFT 10/12/06

Exhibit "A-1"

**EXHIBIT B**

October 27, 2006  
Page 13 of 41

LAND COURT

REGULAR SYSTEM

Return By Mail ☐ Pick-Up ☐ To:

CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

Attention: Robert E. Strand  
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

**CITY OF KAPOLEI LIMITED WARRANTY DEED  
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

PARTIES TO DOCUMENT:

GRANTOR: **KAPOLEI PROPERTY DEVELOPMENT LLC**  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707

GRANTEE: **STATE OF HAWAII**, by its Board of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

TAX MAP KEY(S): Oahu 9-1-\_\_\_\_ (This document consists of \_\_\_\_ pages.)  
Lot 80001-C-1, Map \_\_\_\_, L.C.App. 1069, TCT No. \_\_\_\_\_

**CITY OF KAPOLEI LIMITED WARRANTY DEED  
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

**KNOW ALL MEN BY THESE PRESENTS:**

THIS INDENTURE is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, hereinafter called the "Grantor", and the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "Grantee",

**WITNESSETH:**

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, the property described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances and reservations set forth in said **Exhibit "A"** and to the covenants, rights, reservations, exceptions, obligations, duties and agreements set forth below (the "Property").

And the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto.

TOGETHER WITH non-exclusive easements appurtenant to the Property for access purposes over and across Easements "1" and "2" as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, together with the right to construct, reconstruct, install, reinstall, operate, repair and maintain driveway improvements within said Easements "1" and "2"; provided that (i) such improvements in Easements "1" and "2" will not have a material adverse impact on the design or use of improvements planned for or existing therein, (ii) after performing any work in

Easements "1" or "2", Grantee shall return the land to its original condition to the extent that such restoration is reasonably possible without adversely affecting any driveway improvements constructed thereon, (iii) Grantor shall have the right to review and comment on any improvements in Easements "1" and "2" prior to the construction of such improvements and Grantee shall reasonably coordinate the location and construction of such improvements with the Grantor, and (iv) Grantee shall not be responsible for maintaining any part of Easements "1" or "2" other than any driveway or other improvements Grantee constructs thereon. Said easements will terminate automatically as to any portion of said Easements "1" or "2" upon Grantor's dedication to, and acceptance thereof as a public highway by, any governmental authority, Grantor reserving the right to so dedicate the same without notice to or the joinder of Grantee; provided that the public highway provides access to the Property through the then-existing driveways.

EXPRESSLY EXCEPTING AND RESERVING UNTO GRANTOR, ITS SUCCESSORS, AND ASSIGNS, the right to grant or relocate in, on, over, under, across and through those portions of the Property designated as Easement "70002", as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (the landscaping easement along the boundaries of the Property) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance, repair and replacement of underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, upon such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement "70002" will not have a material adverse impact on the design or use of improvements planned for or existing on the Property or Easements "1" and "2",



(ii) after performing any work in Easement "70002", Grantor or such grantees shall restore the Property and Easements "1" and "2" to the condition they were in prior to the performance of work in Easement "70002" to the extent that such restoration is reasonably possible, (iii) Grantee shall have the right to review and comment on any improvements in Easement "70002" prior to the construction thereof, and the Grantor shall reasonably coordinate the location and construction of such improvements with the Grantee, and (iv) Grantee shall not be obligated to pay any costs or expenses regarding the grant of any easements under this paragraph or to construct, repair or maintain any of the lines, facilities, appurtenances, or other improvements constructed, installed, or operated by the grantees under any such agreements. Without limiting the foregoing, the Grantor reserves the right to grant easements within Easement "70002" to the Association created under the Declaration for the purpose of landscaping and/or such other purpose as the Grantor deems appropriate; and

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the said Grantee, absolutely and in fee simple.

And for the consideration aforesaid, the Grantor, for itself, its successors and assigns, does hereby covenant and agree with the Grantee, its successors and assigns, that the Grantor has done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid; and that the Property is free and clear of all liens and encumbrances made or suffered by the Grantor; and that the Grantor will and its successors and assigns shall, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through and under the Grantor, except as aforesaid.

SUBJECT, HOWEVER, to the following:

1. Grantee does hereby acknowledge that, by the acceptance and recordation of this deed, it (i) is familiar with and has examined the physical conditions of the Property and has agreed to accept the Property without any warranties or representations by Grantor except the limited warranties of title set forth above, and the reservations regarding environmental conditions as set forth below, and (ii) agrees and covenants to hold and shall hold, convey, encumber, use, occupy and improve the Property subject to the terms, covenants, conditions, reservations and restrictions contained herein, and shall not use or permit the use of the Property in violation thereof. Grantor acknowledges that Grantee does not release Grantor for any environmental remediation costs or other costs or damages resulting from contamination of the Property or Easements "1" and "2" prior to the date hereof unless such contamination has occurred by or through Grantee.

2. The Property shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on the Property. The term "governmental offices and other public facilities" may include a court building and juvenile detention facility (including ancillary central plant structures). The Property shall not be used for any other purposes without the prior written consent of Grantor, which consent may be withheld by the Grantor in its sole discretion for any reason. If Grantee breaches the foregoing use restriction, Grantee acknowledges the Grantor may pursue a claim for damages against Grantee for such breach but not for a reverter of the Property to Grantor or the remedies of specific performance or injunctive relief, and Grantor's damages for such breach shall be limited to actual (but not consequential) damages, which Grantor agrees shall not exceed the fee simple fair market value of the Property at the time of such breach, exclusive of any buildings, and unencumbered by any lease or any use restriction.

3. Grantor shall have the right, without the consent of but with notice to Grantee, to assign or partially assign any or all of the rights, reservations and exceptions, held by Grantor hereunder, to the "Declarant" or to the "Association", as these terms are defined in the Declaration.

4. The Grantee agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is feasible, including, without limiting the generality of the foregoing, development of a nonpotable water system on the Property and connecting such system to the nonpotable water system for the City of Kapolei within one hundred twenty (120) days after the completion of construction of the court building and juvenile detention facility (including ancillary support structures) on the Property or, if applicable, completion of Grantee's first building on the Property if Grantee does not construct a court building or juvenile detention facility. Notwithstanding the foregoing, the Grantee shall not drill for water on the Property without obtaining Grantor's prior written consent, which consent may be withheld in the Grantor's sole discretion. Any external water features, including but not limited to ponds, streams, fountains and water falls on the Property shall use nonpotable water whenever the same is reasonably available. Grantee's landscaping and ground cover shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources; provided, however, that Grantee may use St. Augustine grass for ground cover on the Property. The Grantee authorizes the Grantor to obtain water consumption records pertaining to the Property from the BWS or any other Governmental Authority or private entities providing water to the Property, and agrees to provide the Grantor written authorization to do so if so required.

5. That certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the

Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006 filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 248739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively, as the same may be amended from time to time (collectively the "Declaration"). The Grantor's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company ("New Declarant"), by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. Grantee shall use reasonable efforts to comply with the Signage Guidelines attached as **Exhibit "G"** to the Declaration subject to such modifications as are consented to by the New Declarant, which consent shall not be unreasonably withheld.

6. Any word, term or phrase which begins with initial capitalization and which is not defined in this deed, shall be given the definition of such word, term or phrase in the Declaration.

7. The foregoing rights, reservations, exceptions, obligations, duties and agreements of Grantor and Grantee shall be deemed covenants running with the land, binding upon Grantor and Grantee, and their respective successors and assigns, for a period commencing with the filing of this deed in the Office of the Assistant Registrar of the Land Court of the State of and continuing for as long as the Declaration shall be in effect as to the City of Kapolei, all as more fully described in Article 2.2(III) of the Declaration, the terms of which article are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be  
duly executed on the day and year first above written.

**KAPOLEI PROPERTY DEVELOPMENT LLC,**  
a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation,  
its member manager

Approved as to Form  
Carlsmith Ball LLP

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

"Grantor"

**STATE OF HAWAII**, by its Department of  
Land and Natural Resources

By \_\_\_\_\_  
Chairperson, Board of Land and Natural  
Resources

APPROVED AS TO FORM:

By \_\_\_\_\_  
Deputy Attorney General

By \_\_\_\_\_  
Member, Board of Land and Natural  
Resources

Date: \_\_\_\_\_

"State"

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

**EXHIBIT "A"**

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 80001-C-1, area 15.274 acres, as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by **Certificate of Title No.** \_\_\_\_\_, issued to Kapolei Property Development LLC, a Hawaii limited liability company.

SUBJECT, HOWEVER, to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.

2. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829.

3. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119177.

4. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119179.

5. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, filed in said Office of the Assistant Registrar as Land Court Document No. 3195672.

6. Designation of Easement "6170" for non-potable water utility purposes, as shown on Maps 898 and 1055, as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_.

7. Grant of Non-Exclusive Easements in favor of the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu dated December 30, 2004, filed in said Office of the Assistant Registrar as Land Court Document No. 3228386.

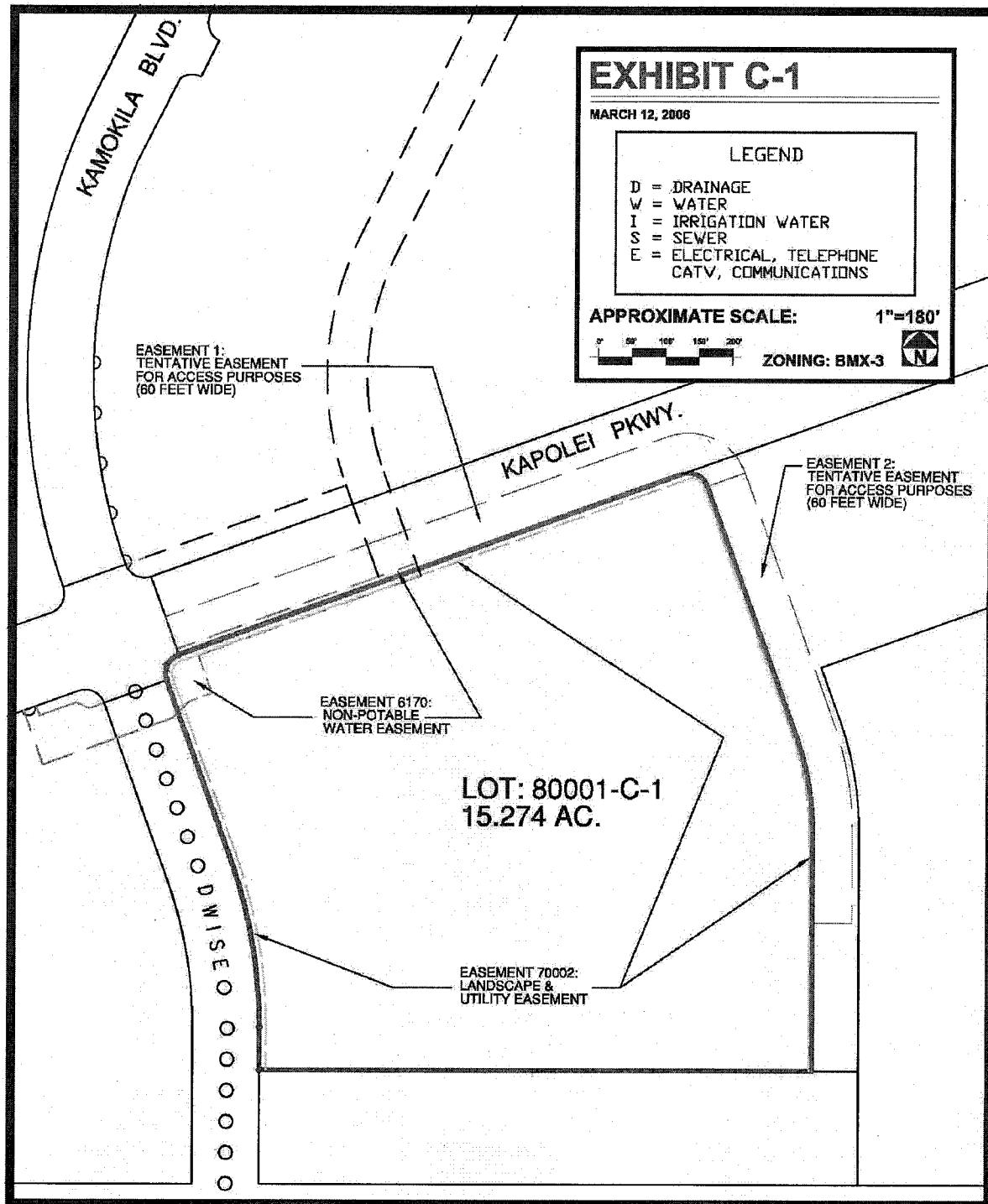
8. Designation of Easement "70002" (\_\_\_\_\_ square feet) for landscaping and utility purposes, as shown on Map \_\_\_\_\_, as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_.

9. Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictive Covenants, Conditions and Restrictions (Government Use) dated \_\_\_\_\_, 200\_, filed in said Office as Land Court Document No. \_\_\_\_\_.

End of Exhibit "A"



**EXHIBIT "C-1"**



## EXHIBIT "C-2"

### LOT 80001-C-1 OFF-SITE IMPROVEMENTS

#### 1. Interim Improvement.

KPD shall provide access to Lot 80001-C-1 sufficient to permit the commencement of construction of the Required Improvements or the Modified Required Improvements, as the case may be, on the Property. This access may not be paved or of a permanent nature, and KPD reserves the right, from time to time, with reasonable notice to the State (not less than 15 calendar days), to relocate this temporary access in order to facilitate construction of other improvements in the City of Kapolei. KPD shall cooperate with the State as reasonably necessary to obtain governmental permits and approvals for the construction of the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements to Easements "1" and "2" provided that the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements are in compliance with the State's obligations under the letter agreement to which this Exhibit "C-2" is attached and such cooperation is at no cost to KPD.

#### 2. Permanent Improvements.

KPD covenants and agrees to provide the following KPD improvements prior to the completion of construction of the Required Improvements or the Modified Required Improvements, as the case may be, subject to extensions of time for delays in the completion of such improvements caused by force majeure:

a. Paved Access. In order to provide reasonable access to and from Lot 80001-C-1, KPD shall extend Kamokila Boulevard to the Renton Road alignment intersection. KPD will provide curbs, gutters and sidewalks along Kamokila Boulevard. KPD will also provide along the extension of Kamokila Boulevard two (2) curb cuts with related driveway aprons in the locations set forth on Exhibit "C-3" attached hereto and incorporated herein by reference. If Waianiani Way is constructed, the entity completing such construction will provide curbs, gutters and sidewalks along any portion of Waianiani Way so constructed. If such construction extends through the entrance to Lot 80001-C-1 shown on Exhibit "A-1", the entity completing such construction shall also provide a curb cut and driveway apron for such entry. KPD shall not be responsible for any other curb cuts, driveways or aprons for the Required Improvements or the Modified Required Improvements, as the case may be.

b. Drainage. KPD will provide drainage improvements to serve Lot 80001-C-1 in Kamokila Boulevard incrementally as and when required to accommodate buildings on Lot 80001-C-1. State will be responsible for all on-site drainage requirements including, but not limited to, NPDES requirements. If permanent drainage improvements to be constructed by KPD are not completed by the time the State begins construction of the Required Improvements or the Modified Required Improvements, as the case may be, temporary drainage meeting all applicable governmental requirements will be provided by KPD. The permanent and temporary off-site drainage improvements provided by KPD shall meet all applicable governmental requirements and accommodate the quantity of stormwater runoff generated from Lot 80001-C-1 based on the data provided by the State's consultants prior to

September 1, 2006, and the State shall meet all applicable governmental requirements regarding the quality of the stormwater water runoff generated from Lot 80001-C-1.

c. Potable Water and Sewer Service; Fire Hydrants. KPD will install potable water and sewer lines in Kamokila Boulevard adjacent to or near Lot 80001-C-1. The potable water line will be connected to the Board of Water Supply's water main. The sewer line will be connected to the sewer main of the entity providing sewer service. KPD will allocate potable water for the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1 from a water source available to KPD based on Board of Water Supply standards but in no event exceeding 45,900 gallons of maximum day capacity. The State shall not be required to reimburse KPD or the Board of Water Supply for source, storage or transmission charges for such allocation. By letters dated August 7, 2006 and September 8, 2006, the Estate has agreed to allocate 57 ESDU's of sewage transmission capacity for the Required Improvements subject to the State's reimbursement to the Estate of \$280,468 for such allocation. The Estate's allocation obligation and right to receive reimbursement has been assigned to and assumed by KPD. It shall be State's responsibility to obtain and pay for any other costs associated with the connection to or the provision of potable water or sewer services to Lot 80001-C-1. While KPD shall install fire hydrants in Kamokila Boulevard as shown on KPD's construction plans approved by the City and County of Honolulu (the "City"), all other fire hydrants and fire protection facilities required for the Required Improvements or the Modified Required Improvements as the case may be, shall be designed and constructed at the State's expense.

d. Non-potable Water Line. The State agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is feasible, and to develop a nonpotable water system on Lot 80001-C-1 and connect such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the completion of construction of the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1. The Board of Water Supply has advised the State that non-potable water service will be available from an existing 16-inch R-1 main located in the Kamokila Boulevard extension fronting Lot 80001-C-1. The Board of Water Supply may impose a meter or other hook-up charge for this non-potable water which, together with any other costs associated with the connection or provision of non-potable water to Lot 80001-C-1, will be paid by the State. Notwithstanding the foregoing, the State shall not drill for water on Lot 80001-C-1 without obtaining KPD's prior written consent (which may be withheld in KPD's sole discretion.) Any external water features, including but not limited to ponds, streams, fountains and water falls shall use nonpotable water whenever the same is reasonably available. The landscaping and ground cover on Lot 80001-C-1 shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. The State authorizes KPD to obtain water consumption records pertaining to Lot 80001-C-1 from the BWS or any other governmental agencies or private entities providing water to Lot 80001-C-1, and agrees to provide KPD written authorization to do so if so required.

e. Other Utilities. KPD at its expense will install in Kamokila Boulevard to the boundary of Lot 80001-C-1 a utility conduit system for electrical and telephone and cable television lines. It shall be the State's responsibility, at its expense, to (i) pull the lines and install any other facilities required to provide electric, telephone and cable television service to, and (ii) contact the appropriate utility or provider for services in the conduit system to serve Lot 80001-C-1 and to pay for such services. KPD's infrastructure does not include gas lines.

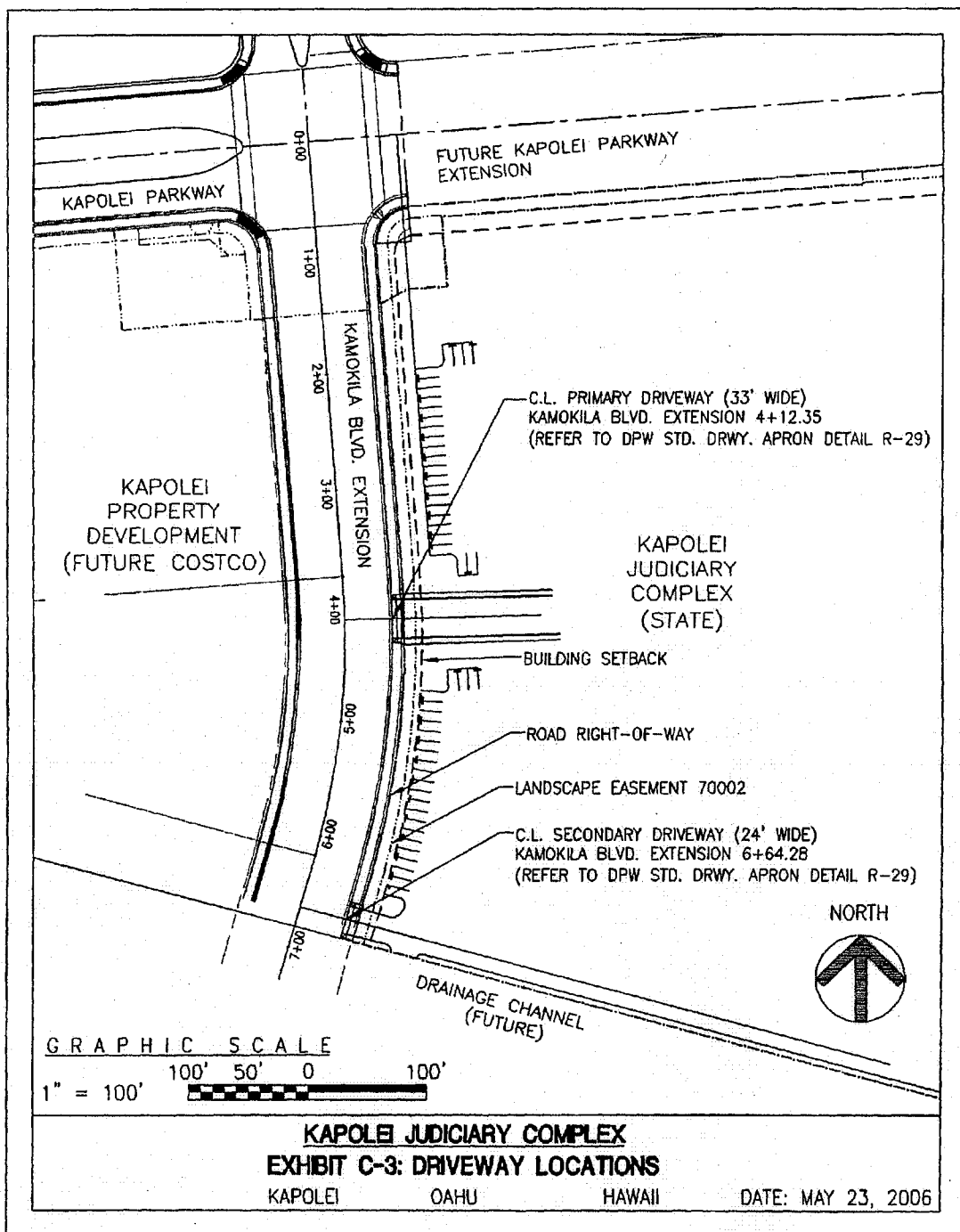
KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. KPD shall give the State at least forty-five (45) calendar days written notice prior to KPD's commencement of construction in Kamokila Boulevard.

f. Traffic Improvements. KPD shall make the following traffic improvements at its cost and expense: (i) install a traffic signal at the intersection of Kapolei Parkway and Kamokila Boulevard when warranted by traffic counts and approved by the City; (ii) provide a second (double) left-turn lane on the southbound approach of Kalaeloa Boulevard to Kapolei Parkway; (iii) provide an additional lane in the median area on the westbound approach of Kapolei Parkway to Kalaeloa Boulevard and re-stripe the westbound lanes to provide a left-turn lane, a right-turn lane, and a middle lane from which traffic can turn left or right or go straight through the intersection. The traffic improvements described in (ii) and (iii) above will be completed within two (2) years after KPD receives all required approvals and permits from the City for those improvements.

KPD's obligations under this Exhibit "C-2" shall only be to provide such improvements as are necessary to service Lot 80001-C-1, and nothing herein shall be deemed or construed to require or otherwise obligate KPD to complete such infrastructure to any other portions of the City of Kapolei or to complete any other amenities or facilities of any kind or description in the City of Kapolei prior to the completion of the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1. Without limiting the foregoing, the State acknowledges that such infrastructure and other amenities or facilities for the City of Kapolei may not be completed within such time period; may be changed, modified or deleted from time to time in accordance with the provisions of the Declaration; and may not be constructed at all as to any portions of KPD's lands which are not annexed to the City of Kapolei. The State further acknowledges and agrees that KPD's construction of such infrastructure and other amenities or facilities may interfere with the State's use and enjoyment of Lot 80001-C-1 during the periods of such construction.

End of Exhibit "C-2"

# EXHIBIT "C-3"



LAND COURT

REGULAR SYSTEM

Return By Mail ☐ Pick-Up ☐ To:

CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand  
Telephone: 523-2525

**TITLE OF DOCUMENT:**

**SUPPLEMENTAL DECLARATION AND AMENDMENT TO CITY OF KAPOLEI DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
(Government Use)**

**PARTIES TO DOCUMENT:**

**DECLARANT:** **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability  
company  
James Campbell Building, Suite 257, 1001 Kamokila Boulevard, Kapolei,  
Hawaii 96707

**CONSENTING  
PARTY:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability  
company

**TAX MAP KEY(S):** (Oahu) 9-1-016: parcels 034; 054(por.); 121 and 125  
(Oahu) 9-1-088: parcels 001 through 011; and parcels 013 through 018  
(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016  
(Oahu) 9-1-118: parcels 001 through 009  
Certificate of Title Nos. 422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;  
569,438; 576,046; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,144; 600,145;  
600,146; 600,147; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155;  
600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165;  
600,166; 600,287; 619,022; 631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;  
674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,011; 806,012; 806,013;  
806,014; and 807,561.

(This document consists of \_\_\_ pages.)

**SUPPLEMENTAL DECLARATION AND AMENDMENT TO  
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

(Government Use)

THIS SUPPLEMENTAL DECLARATION, dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made by **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company (the "Declarant"), whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

**RECITALS:**

WHEREAS, as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as the same has been and may be amended and/or modified from time to time (collectively the "Declaration"); and

WHEREAS, by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto said Trustees' as the original Declarant under the Declaration; and

WHEREAS, Kapolei Property Development LLC, a Hawaii limited liability company, is the Owner of Lot 80001-C-1, as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in **Exhibit 1** attached hereto and incorporated herein by this reference (the "Annexed Lot"); and

WHEREAS, although the Annexed Lot is not currently a part of the Benefited Lands, to the extent that Declarant may only Annex a legal Lot, Declarant intends to hereby Amend the definition of "Benefited Lands" in the Declaration to conform such definition to include all of the Annexed Lot; and

WHEREAS, Declarant reserved unto itself in Section 3.1 (Amendment To Declaration) of the Declaration, the right, power and authority to Amend the Declaration to correct any technical defects or to make non-substantive changes, such as the Amendment described in the immediately preceding recital; and

WHEREAS, Declarant reserved unto itself in Section 3.3 (Annexation) of the Declaration, the right, power and authority to Annex portions of the Benefited Lands to the Land with the Consent of the Owner of the applicable Benefited Land, and thereby subject such Annexed parcels to the terms of the Declaration; and

WHEREAS, as a condition of rezoning of the Annexed Lot from zoning designation Ag-1 to zoning designation B-2, the City and County of Honolulu required that the

Annexed Lot be developed in conformance with the City of Kapolei Urban Design Plan, as amended from time to time; and

WHEREAS, Declarant intends to Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration and to the City of Kapolei Urban Design Plan;

WHEREAS, Owner intends to convey the fee simple interest in the Annexed Lot to the State of Hawaii for government use only in partial satisfaction of its obligations under that certain Findings of Fact, Conclusions of Law and Decision and Order entered by the State of Hawaii Land Use Commission dated September 23, 1988, as amended, reclassifying certain lands situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii from Agricultural District to Urban District and subject to the Declaration as heretofore and hereby amended; and

WHEREAS, Declarant intends to now Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration, as modified hereinbelow;

NOW THEREFORE, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. Declaration; Annexation of Annexed Lot to Declaration. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, as of the Effective Date (defined in paragraph 3 below) Declarant does hereby Annex the Annexed Lot described in Exhibit 1 to the Land. For all purposes set forth in Section 1.2 of the Declaration, or otherwise expressly set forth or implicit in the Declaration, Declarant declares that the Annexed Lot is and shall be from the Effective Date and throughout the Term developed, maintained, utilized, operated and Transferred subject to any and all of the protective covenants, conditions and restrictions set forth in the Declaration. The Declaration shall attach to the title to the Annexed Lot, inure to the benefit of each Owner, and run with such title throughout the Term, being binding upon and Enforceable against every Owner and Occupant.

2. Use of the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby declare that the Annexed Lot shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings included in the Approved Improvements constructed on the Annexed Lot. The term "governmental offices and other public facilities" may include a court building and a juvenile detention facility (including ancillary central plant structures). The foregoing uses are deemed to be government use for purposes of the Declaration, and at all times during such use, the Annexed Lot shall not be deemed to be a part of the Development Land. If after the completion of construction of any Approved Improvements on the Annexed Lot, the Annexed Lot ceases, at any time and from time to time, to be used for government use as required under this paragraph 2, then during all times that the Annexed Lot is not used for such government use, the Annexed Lot shall automatically and without further action by Declarant or the Owner of the Annexed Lot: (i) be deemed to be used for commercial purposes and deemed to be a part of the Development Land; (ii) have Floor Area and Units computed in accordance with the provisions of Section 5.4 of the Declaration and based upon the Approved Improvements, notwithstanding the fact that there is not a minimum Floor Area and Units shown on Exhibit "D" to the Declaration; and (iii) the Owner of the Annexed Lot shall be required to pay all Assessments of any type assessed against the Annexed Lot under the Declaration during such



periods. During any such periods that the Annexed Lot is not used for government use as set forth herein, the Owner of the Annexed Lot shall also have voting rights as a Member of the Association, as and to the extent set forth in the Declaration.

3. Effective Date. The effective date ("Effective Date") of this Supplemental Declaration shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

4. Amendment to Exhibit A of Declaration. Under Section 3.1 of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of Benefited Lands is Annexed to the Land pursuant to Section 3.3 of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "A" of the Declaration by adding thereto the legal description of the Annexed Lots attached hereto as Exhibit 1, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

5. Amendment to Exhibit D of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit "D" of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D" of the Declaration by deleting in its entirety every previous Exhibit "D" and substituting therefor the revised Exhibit "D" attached hereto as Exhibit "D" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

6. Amendment to Exhibit D-1 of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D-1" of the Declaration by deleting in its entirety every previous Exhibit "D-1" and substituting therefor the revised Exhibit "D-1" attached hereto as Exhibit "D-1" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

7. Modification of Declaration as to Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 7, the provisions of this paragraph 7 shall control.

7.1. No Assessments. During all periods that (i) the Annexed Lot is used for government use as set forth in paragraph 2 above and (ii) the State of Hawaii has any interest in the Annexed Lot, the State of Hawaii shall be exempt from paying General, Special or Subdistrict Assessments on the Annexed Lot, whether past, present or future, and including, without limitation, any Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration.

7.2. No Reimbursements. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Reimburse the Board, the Association, the Declarant or any other Party under the Declaration.

7.3. No Indemnity. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Indemnify the Board, the Association, the Declarant or any other Party under the Declaration.

7.4. No Liens. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii's interest in the Annexed Lot shall not be subject to any lien under the Declaration.

7.5. Non-Disturbance and Attornment. During all periods that the State of Hawaii is the sublessee of the entire Annexed Lot: (a) the State of Hawaii shall not be deemed to be the Owner of the Annexed Lot; and (b) if the Declarant or the Board (on behalf of the Association) forecloses on any lien arising under the Declaration against the interests of the Owner of the Annexed Lot, the interest of the State of Hawaii, as such sublessee, shall not be disturbed so long as (i) the State of Hawaii is not in default of its obligations under such sublease and (ii) the State of Hawaii agrees to attorn to any Party who succeeds to such Owner's interest in the Annexed Lot upon the request of such Party.

7.6. Cure Periods. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii and the Owner of the Annexed Lot (if other than the State of Hawaii) shall have one hundred twenty (120) days, running concurrently, to complete any actions required of them under Notices given pursuant to Sections 6.6 or 7.9 of the Declaration (subject to further extension as provided for in such Sections), rather than the sixty (60) day periods specified in such Sections.

7.7. Inspection. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be given two (2) business days prior written Notice before the Board, its designees or the Declarant enter onto the Annexed Lot pursuant to the provisions of Sections 7.9 or 10.6 of the Declaration.

7.8. Remedies. Paragraph 2 and subparagraphs 7.1, 7.2 and 7.3 above shall not be deemed or construed to prevent:

(i) the Declarant from (x) bringing an action for damages against the State of Hawaii after it has acquired the fee simple interest in an Annexed Lot, or any of its Transferees thereafter holding the fee simple interest in such Lot, for breach of the restrictions set forth in paragraph 2 above limiting the use of the Annexed Lot to government use, and (y) recovering all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Declarant that are recoverable at law from the State of Hawaii or such Transferees in such an action;

(ii) the Board (on behalf of the Association) from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to (a) recover costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association as a result of the State of Hawaii's act or failure or refusal to act in accordance with the Declaration or its failure or refusal to comply with the Rules while it is the Owner of the Annexed Lot and such Annexed Lot is used for government use as set forth in paragraph 2 above, or (b) collect

any Assessments, levied against the Annexed Lot pursuant to paragraph 2 during any periods that it is not used for such government use, that are due and unpaid;

(iii) the Board (on behalf of the Association), the Declarant or any other Party from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to recover all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association, the Declarant or such Party, as appropriate, that are recoverable at law from the State of Hawaii, with respect to any event or occurrence that would otherwise be subject to Reimbursement or Indemnity under the provisions of the Declaration, but for subparagraphs 7.2 and 7.3 above;

(iv) the Board (on behalf of the Association), or the Declarant (pursuant to Section 10.8 of the Declaration) from exercising their rights under Sections 5.6(f) of the Declaration; or

Notwithstanding any provision in this paragraph 7.8 to the contrary, nothing in this Supplemental Declaration or the Declaration, as it may be supplemented or amended from time to time, shall be deemed to waive the sovereign immunity of the State of Hawai'i beyond what is expressly provided in the Constitution, statutes and case law of the State of Hawai'i.

7.9. Exempt Property. In addition to the foregoing provisions of this paragraph 7 which apply to the State of Hawaii, Section 9.10 of the Declaration is hereby modified as follows as it applies to all other Owners of an Annexed Lot:

From the Effective Date through completion of construction of an Approved Improvement on the Annexed Lot and during all periods that the Annexed Lot is used for government use as set forth in paragraph 2 above, the Owners of the Annexed Lot (other than the State of Hawaii) shall be exempt from paying: (i) all Assessments (including, without limitation, Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration and the initial contribution required under Section 9.2 of the Declaration), except for Special Assessments levied against them pursuant to Sections 9.6(a) and/or 9.6(b) of the Declaration; and (ii) all Reimbursements, except for Reimbursements owed by such Owners to the Association under this Declaration as a result of their failure to pay such Special Assessments.

7.10. Reserved Rights of Declarant. For so long as an Annexed Lot is used solely for government use as set forth in paragraph 2 above, the Annexed Lot shall be exempt from the following provisions of the Declaration which reserve certain rights unto the Declarant as set forth therein: (i) Section 10.1, dealing with Water Rights; (ii) Section 10.2, dealing with Easements; and (iii) Section 10.4, dealing with Air Rights. In the event that the Annexed Lot ever ceases, at any time and from time to time, to be used solely for government use as set forth in paragraph 2 above, then during all times that the Annexed Lot is not used for such government use, the foregoing provisions of Article X of the Declaration shall automatically and without further action by Declarant or the Owner of the Annexed Lot, apply fully to the Annexed Lot as set forth in Article X of the Declaration.

8. No Other Effect. Except as expressly provided in paragraphs 1 through 7 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

9. Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title:

422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;  
569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314;  
600,144; 600,145; 600,146; 600,147; 600,148; 600,149; 600,150;  
600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157;  
600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164;  
600,165; 600,166; 600,230 (as to Lot 16013); 600,287; 619,022;  
631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;  
674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010;  
806,011; 806,012; 806,013; 806,014; and 807,561.

10. Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

11. Consent of Owner. By its execution of this instrument, Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Annexed Lot, does hereby join in and consent to the Annexation of the Annexed Lot to the Declaration in accordance with the terms and conditions of this instrument and of the Declaration.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Declarant has executed these presents as of the date first above written.

Consent of Owner:

KAPOLEI PROPERTY DEVELOPMENT  
LLC, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

Declarant:

CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited  
liability company

By James Campbell Company LLC, Its Manager

By: \_\_\_\_\_  
Name:  
Title: [Officer of JCCLLC]

By: \_\_\_\_\_  
Name:  
Title: [Officer of JCCLLC]

STATE OF HAWAII

)  
) ss.  
)

CITY AND COUNTY OF HONOLULU

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

)

)

)

Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**EXHIBIT 1**

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 80001-C-1, area 15.274 acres, as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by Certificate of Title No. \_\_\_\_\_, issued to Kapolei Property Development LLC, a Hawaii limited liability company.

**End of Exhibit 1**



EXHIBIT D-1

[REVISED EXHIBIT D-1 TO BE ATTACHED]

End of Exhibit D-1

End of Exhibit D

END OF  
10/27/06 BLNR SUBMITTAL "EXHIBIT B":  
LETTER AGREEMENT DATED OCTOBER \_\_, 2006

10/27/06 BLNR SUBMITTAL "EXHIBIT C":  
REDLINED LETTER AGREEMENT DATED OCTOBER \_\_, 2006

~~<June 30, 1998>~~ October , 2006

Mr. ~~<Michael F. Broderick>~~ Thomas R. Keller

Administrative Director of the Courts,  
State of Hawaii  
417 South King Street  
Honolulu, Hawaii 96813

Mr. ~~<Michael Wilson, Chairman>~~ Peter T. Young

Chairperson  
Department of Land and Natural Resources,  
State of Hawaii  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Mr. ~~<Raymond H>~~ Russ K. ~~<Sato>~~ Saito

State Comptroller  
Department of Accounting and  
General Services, State of Hawaii  
P. O. Box 119  
Honolulu, Hawaii 96810

Gentlemen:

Re: State/Campbell Estate Agreement dated  
September 14, 1994 - Kapolei Judiciary Complex

I am writing to you on behalf of the Estate of James Campbell (the "Estate") and Kapolei Property Development LLC, a Hawaii limited liability company ("KPD") in reference to that certain letter agreement dated September 14, 1994 (the "September Letter Agreement") regarding the Estate's obligations to provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations in Kapolei to be used for governmental offices or other public facilities.

On September 23, 1988, the State of Hawaii Land Use Commission ("LUC") entered Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") which granted the Estate's petition to amend the Land Use District boundary to reclassify approximately 890 acres of land situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii, from the Agricultural District to the Urban District to develop Kapolei. The Decision and Order contained a number of pre-conditions which were more particularly described in that certain Document Evidencing Petitioner's Commitments dated April 11, 1989. These conditions included the 40-acre obligation described above.

In the September Letter Agreement, the State and the Estate identified the locations of the 40 acres which will satisfy one of the pre-conditions including Parcels 4 and 5, containing an aggregate area of approximately 13.5 acres, to be used for the Kapolei Judiciary Complex. ~~<Due to the passage of time and other considerations, the>~~ The State and the Estate ~~<have agreed>~~ proposed to enter into a new letter agreement dated June 30, 1998, (the "June 1998 Letter") covering specifically Parcels 4 and ~~<5 on terms and conditions that will>~~ 5, which would supersede the September Letter Agreement as to the terms and conditions

Compared v22/v51  
4839-8549-8368.51.054438-00062  
DRAFT 10/12/06

BLNR - Acquisition of Lands for Hawaii State Judiciary

**EXHIBIT C**

October 27, 2006  
Page 2 of 53

pertaining to Parcels 4 and 5 ~~<only. The purpose of this letter is to set forth these agreements>~~ and the acreage to be included in Parcels 2 and 6.

The June 1998 Letter was submitted to the Board of Land and Natural Resources for approval. On February 26, 1999, the Board approved the June 1998 Letter as agenda Item D-14. Due to the passage of time since the June 1998 Letter was approved, and there being further clarification and modifications to the June 1998 Letter, the parties now wish to update and restate the terms and conditions under which Parcels 4 and 5 would be conveyed to the State for the Kapolei Judiciary Complex.

The amended terms and conditions set forth herein regarding Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6 supersede those in the September Letter Agreement and the June 1998 Letter. For the convenience of the parties, these amended terms and conditions are restated and set forth in their entirety as follows:

1. ~~<1.——~~Designation of State Land. The forty (40) acres of land to be provided by the Estate to the State shall include the land designated as Lot 80001-C-1 (formerly Parcels 4 and 5) on Exhibit "A" attached hereto and incorporated herein by reference on the terms and conditions more particularly set forth below. Lot 80001-C-1 is currently owned by KPD. Lot 80001-C-1 contains an increased area of 15.274 acres. As a result, the remaining lands to be provided by the Estate and designated as Parcels 2 and 6 in the September Letter Agreement will be reduced in size so that the total area provided to the State does not exceed 40 acres in total.

2. ~~<2.——~~Conveyance of Land. Subject to the satisfaction of the terms and conditions of this agreement, ~~<Parcels 4 and 5>~~Lot 80001-C-1 will be conveyed upon the State's request, but no later than sixty (60) days after the ~~<State has (i) entered into a binding commitment with a developer selected by the Estate to lease buildings to be constructed upon Parcels 4 and 5 with an average aggregate density of not less than 0.39 of the land area of Parcels 4 and 5 provided that such developer has met, to the Estate's satisfaction, the construction requirements set forth in the Ground Lease described in paragraph 6 below; or (ii) entered into a financing agreement pursuant to Chapter 37D, Hawaii Revised Statutes, to build buildings on Parcels 4 and 5 meeting such requirements; or (iii) entered into a construction agreement to build buildings on Parcels 4 and 5 meeting such requirements and general obligation bonds have been issued to pay for the cost of such construction>~~subdivision of Lot 80001-C-1 has been completed as set forth below and the State has entered into a construction agreement for a court building and juvenile detention facility (including ancillary central plant structures) to be constructed on Lot 80001-C-1 with a floor area ratio as defined in the Land Use Ordinance of the City and County of Honolulu ("FAR") of not less than 0.39 (the "Required Improvements") and State funds have been appropriated and have been certified as available for said construction agreement. Notwithstanding the foregoing, however, if ~~<Parcels 4 and 5 are>~~Lot 80001-C-1 is not used by the State for a ~~<Family Court Center and a Juvenile Detention Center>~~court building and a juvenile detention facility (including ancillary central plant structures), the density of the buildings constructed on ~~<Parcels 4 and 5>~~Lot 80001-C-1 shall ~~<be not less than 0.5 of the land area of Parcels 4 and 5. The buildings to be constructed on Parcels 4 and 5>~~have a FAR of not less than 0.5 and the definition of "Required Improvements" shall be modified accordingly. The Required Improvements shall be designed by the State. ~~<The Estate's>~~Subject to the provisions of

paragraph 3.a below, the obligation to make a conveyance of <Parcels 4 or 5> Lot 80001-C-1 shall terminate <on December 31, 2006, if the State has not (a) entered into a binding commitment with a developer as described above, or (b) entered into a financing agreement pursuant to Chapter 37D, Hawaii Revised Statutes, to build buildings on Parcels 4 and 5 meeting such requirements; or (c)> as provided in paragraph 3 below if the State has not entered into a construction agreement to build <buildings on Parcels 4 and 5 meeting such requirements and general obligation bonds have been issued> the Required Improvements or State funds have not been appropriated and certified as available to pay for the cost of such construction. Such conveyance shall also be subject to the receipt of <rezoning and> subdivision approvals from the City and County of Honolulu and the filing of the required subdivision map with the Land Court of the State of Hawaii, all of which will be completed by the Estate and/or KPD at <the Estate's> their sole cost and expense. If <the Estate cannot obtain such rezoning and subdivision approvals, the Estate will pursue the same> KPD has not obtained subdivision approval of Lot 80001-C-1 from the City and County of Honolulu by June 30, 2007, or such other date as may be mutually agreed upon by the parties to this letter agreement, KPD will pursue obtaining subdivision approval on a substitute parcel or parcels mutually <acceptable to the Estate and the State. Based upon the State's proposed schedule, the parties anticipate that the conveyance will be on or before August 1, 1999. The conveyance of Parcels 4 and 5> agreeable to the parties, and said parcel or parcels shall be conveyed to the State on terms and conditions substantially equivalent to those governing the conveyance of Lot 80001-C-1, provided that the State will be given a reasonable period of time to redesign the Required Improvements, obtain any required State funding, and enter into the required construction agreement. The conveyance of Lot 80001-C-1 will be made by means of a limited warranty deed substantially in the form of Exhibit "B" attached hereto and incorporated herein by reference, together with non-exclusive easements for access purposes over <Easement> Easements "<3>1" and <Easement "4">"2" as shown on Exhibit <A>"C-1" attached hereto and subject to (i) the City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions described in paragraph <5 below, (ii) the agreement with the developer selected by the Estate (the "Building Agreement"), if applicable, (iii) the Ground Lease more particularly described in paragraph 6 below, if applicable, (iv)> 6 below, (ii) all liens and encumbrances shown on Exhibit "A" to the limited warranty deed, and (<v>iii) encumbrances imposed as the result of the required subdivision< and rezoning>. The State's right to use Easement "1" will terminate upon the dedication of Easement "1" as a public roadway. The State's rights to use Easement "2" will terminate upon the completion of the construction of roadway improvements therein and the dedication of Easement "2" as a public roadway.

3. Alternate Site Configuration. The State has determined that the projected costs of constructing the Required Improvements exceed the amount of the appropriation approved by the Hawaii State Legislature in the 2005 legislative session. Based on the amount currently appropriated, the State cannot meet the 0.39 FAR density requirement of 259,481 square feet for the Required Improvements to be built on Lot 80001-C-1 unless approximately 4.40 acres of Lot 80001-C-1 is retained by KPD. While the State obtained an appropriation of \$6.0 million in the 2006 legislative session with which to acquire all of Lot 80001-C-1, the State may not be successful in reaching agreement with KPD on such acquisition. As a result, the State and KPD further agree as follows:

a. If the State is not successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1, KPD agrees to convey, and the State agrees to accept, less than the entire 15.274 acres of Lot 80001-C-1. The parties agree that the amount of acreage to be conveyed to the State shall be the maximum number of acres of Lot 80001-C-1 as to which the State has funding to build a court building and juvenile detention center (including ancillary central plant structures) that meet the 0.39 FAR density requirement (the "Modified Required Improvements"). In decreasing the size of the property to be conveyed to the State, the property shall be decreased on the Kapolei Parkway/Waianiani Way side of Lot 80001-C-1 as shown on Exhibit "A-1" attached hereto and incorporated herein by this reference. Thereafter, the term "Lot 80001-C-1" will refer to the smaller parcel to be conveyed to the State. As set forth above, the State shall be entitled to this conveyance (i) after the new lots have been subdivided, (ii) the State has entered into a construction agreement for the Modified Required Improvements, and (iii) State funds have been appropriated and are certified as available for said construction agreement. KPD's obligation to convey the property shall cease if the State fails to meet conditions (ii) and (iii) on or before midnight on June 30, 2007. If the new subdivision of Lot 80001-C-1 in order to create the smaller parcel to be conveyed to the State cannot be completed by June 30, 2007, KPD will convey all of Lot 80001-C-1 to the State subject to the State's agreement and unconditional obligation to reconvey to KPD the land to be retained by KPD after the new subdivision is completed. KPD shall complete the required subdivision and the schedule for completing the subdivision and reconveyance shall be determined by KPD in its sole discretion. The State shall cooperate with KPD in connection with completing the subdivision and the reconveyance, and will promptly execute any applications, agreements or other documents required for the same. KPD shall bear all of the third party, out-of-pocket costs and expenses of reconveying the land to be retained by KPD including the responsibility for completing the subdivision required to effectuate the reconveyance and paying all third party, out-of-pocket costs and expenses for such subdivision.

b. If the State is successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1 and expands the Kapolei Judiciary Complex in the future to include permitted improvements on the additional 4.40 acres of Lot 80001-C-1, KPD agrees that the density requirement for the 15.274 acres taken as a whole shall be reduced to 0.37 FAR.

c. In order to accommodate the State's desire to begin construction as soon as reasonably possible, upon the State's request, KPD will enter into one or more Construction Right of Entry agreements with the State's contractors for the construction of the Required Improvements or Modified Required Improvements, as the case may be, provided that: (i) the subdivision of Lot 80001-C-1 (15.274 acres) has been approved by the City and County of Honolulu; (ii) the State has entered into the construction agreement for the Required Improvements or Modified Required Improvements, as the case may be; and (iii) State funds have been appropriated and certified as available for said construction agreement. The Construction Right of Entry shall be in a form mutually agreeable to KPD and the State.

4. ~~<3. Parcels 4 and 5>~~ Lot 80001-C-1 Improvements. ~~<The Estate>~~ KPD will provide drainage, water and sewer lines ~~<and electrical conduits for Parcels 4 and 5>~~ (together with laterals and points of connection as shown on KPD's construction plans) and a utility conduit system for electrical, telephone and cable television lines (together

with points of connection as shown on KPD's construction plans) for Lot 80001-C-1 as set forth in the conceptual plan attached hereto as ~~Exhibit <C-1>~~ "C-1" and incorporated herein by reference, which plan may be revised by <the Estate. The Estate> KPD. It is understood and agreed that KPD will consult with the State prior to making any revisions to the conceptual plan and/or points of connection that materially adversely change the location or nature of the drainage, water and sewer lines, and/or the conduit system for electrical, telephone and cable television lines serving Lot 80001-C-1 as shown on Exhibit "C-1". KPD has provided or will provide, at its own cost and expense, paved access, drainage, water and sewer lines and other utilities <for Parcels 4 and 5> and improvements for Lot 80001-C-1 as more particularly described in Exhibit "C-2" attached hereto and incorporated herein by reference. KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. If the construction of the Kapolei Parkway extension along the northerly boundary of Lot 80001-C-1 is completed by KPD or KPD's assignee and causes damage to any landscaping, berm or other improvements on Lot 8001-C-1, KPD or its assignee shall restore the same at its expense.

5. <4. Permitted Uses. <The Estate> KPD and the State agree that <Parcels 4 and 5> Lot 80001-C-1 shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on <Parcels 4 and 5> Lot 80001-C-1. The term "governmental offices or other public facilities" may include, among other things, a <Family Court Center and a Juvenile Detention Center, which may be expanded later to also include Circuit and District Court facilities and services. If a supplemental environmental impact statement under Chapter 343, Hawaii Revised Statutes, is required because of the land uses permitted on Parcels 4 and 5, but not because of the use of state funds for such land uses, the Estate will complete such supplemental environmental impact statement at the Estate's cost and expense> court building and juvenile detention facility (including ancillary central plant structures).

6. <5. City of Kapolei Declaration. The Land will be conveyed to the State subject to that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, filed in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, <1997 and October 10, 1997> 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, <and> 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 34321422 and 3449337, respectively, and by that certain <Fourth> Supplemental Declaration To City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions substantially in the form attached hereto as Exhibit "D" and incorporated herein by reference, as the same may be amended from time to time in the future both prior to and after the conveyance of <Parcels 4 and 5> Lot 80001-C-1 to the State (the "Declaration"), which Declaration, as to the matters set forth therein, supplements and completely supersedes the

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5.

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corresponding provisions of the September Letter Agreement as to ~~<Parcels 4 and 5>~~ Lot 80001-C-1. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. The State further agrees to use reasonable efforts to comply with the Signage Guidelines attached as Exhibit "G" to the Declaration subject to such modifications as are consented to by the Estate, which consent shall not be unreasonably withheld.

7. ~~<6. — Ground Lease or Conveyance. The State agrees to take title to Parcels 4 and 5 subject to a long term ground lease (the "Ground Lease") if the State has entered into a binding commitment with a developer selected by the Estate to lease buildings to be constructed on Parcels 4 and 5 by such developer under a development agreement and a Ground Lease for Parcels 4 and 5 entered into with the Estate. If the State takes title subject to the Ground Lease, the Ground Lease shall be mutually acceptable to the parties in form and substance. If the State (a) enters into a financing transaction under Chapter 37D, Hawaii Revised Statutes, and a construction contract is entered into, or (b) general obligation bonds are issued to finance the construction, and a construction Contract is entered into, the land shall be conveyed to the State unencumbered by a Ground Lease>~~

8. >Phase 1 Environmental Site Assessment. The Estate, at its expense, has obtained and delivered to the State a Phase 1 Environmental Site Assessment for Lot 80001-C-1 dated August 4, 2005 prepared by Tetra Tech EM Inc. The Site Assessment states that no recognized environmental conditions were identified on Lot 80001-C-1. Any additional environmental investigations shall be completed at the expense of the State.

9. ~~<7. — City of Kapolei Improvements. As set forth in the limited warranty deed attached hereto as Exhibit "B", <the Estate>KPD has agreed to limit its right to construct improvements within <Parcels 4 and 5>Lot 80001-C-1 for the benefit of the City of Kapolei or <Parcels 4 and 5 to the utility and>Lot 80001-C-1 to Easement 6170, for nonpotable water utility purposes, and Easement 70002, for landscaping <easements>and utility purposes, as shown on Exhibit "A". The State shall have the right to review and comment on the improvements prior to their construction, and <the Estate>KPD shall reasonably coordinate the location and construction of said improvements with the State.~~

10. ~~<8. — Landscaping. The State< shall not be responsible for maintaining>Landscaping. KPD or the City of Kapolei Community Association shall irrigate (until the conveyance of Lot 80001-C-1 to the State) and maintain: (a) the street trees planted by <the Estate>KPD in accordance with the Street Tree Master Plan shown in <The>the City of Kapolei Urban Design <Plan>dated <July 1994>June 1998, if a landscaping easement is granted by the State for such purpose; and (b) the trees in the planting easement(s) shown on the parcel maps<, which shall be maintained and irrigated by the Estate or the City of Kapolei Community Association>. Except in the case of emergencies or health or safety concerns, the State may not cut down, remove or relocate such street trees without obtaining <the Estate>KPD's prior written consent. The Estate shall plant such street trees <on> Parcels 4 and 5 when requested to do so by the State and an easement is provided by the State. The Estate>along the extension of Kamokila Boulevard as set forth in Exhibit "C-2" when~~

such extension is completed. KPD acknowledges that the State may use St. Augustine grass for ground cover within ~~<Parcels 4 and 5>~~ Lot 80001-C-1.

11. ~~<9>~~ Parking. If only ~~<one building is constructed on Parcel 4 and only one building is constructed on Parcel 5 (or only >two buildings are constructed on <a consolidation of Parcels 4 and 5 into a single lot)>~~ Lot 80001-C-1, parking may be on-grade asphalt. If more than ~~<one building is constructed on either Parcels 4 or 5 (or more than >two buildings are constructed on <a consolidation of Parcels 4 and 5 into a single lot)>~~ Lot 80001-C-1, the State agrees to provide one level of parking under each additional building on ~~<Parcels 4 or 5>~~ Lot 80001-C-1, and the remainder of the required parking for each additional building shall be on-grade asphalt located temporarily on ~~<Parcels 4 or 5>~~ Lot 80001-C-1 next to each building with appropriate landscaping. It is understood and agreed that the State's construction of ancillary central plant structures for its court building and juvenile detention facility shall not be considered a third building for purposes of this paragraph. Within ten (10) years of occupancy of each additional building on ~~<Parcels 4 and 5>~~ Lot 80001-C-1, the State shall, subject to funding availability, replace the temporary parking with:

a. ~~<a>~~ Underground parking facility(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

b. ~~<b>~~ Above ground parking structure(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

c. ~~<c>~~ A remote park and ride facility on other lands owned by the State.

12. Assignment by KPD. The State acknowledges and agrees that Lot 80001-C-1 and/or certain adjacent and nearby lands may be transferred by KPD to the James Campbell Company LLC, a Delaware limited liability company ("JCC"), or to another affiliate of KPD or JCC and that KPD may assign this letter agreement to JCC or another affiliate of the KPD or JCC in connection with such transfer(s) with the consent of the State, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment to JCC or any such affiliate, and the assumption by JCC or any such affiliate of KPD's obligations under this letter agreement, KPD shall have no further liability under this letter agreement provided that the assignee assumes and agrees to perform all of KPD's obligations under this letter agreement.

13. ~~<10>~~ Exhibits. All Exhibits referred to in this letter agreement shall be deemed to be incorporated herein by the reference made to them as fully as though the entire Exhibit were set forth within the body of this Agreement itself.

14. ~~<11>~~ Notices. All communications hereunder will be in writing and shall be deemed duly communicated when sent by certified or registered mail, postage prepaid, addressed:

**If to the Estate:**

The Estate of James Campbell  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: Chief Executive Officer

**with a copy to:**

Carlsmith Ball <Wichman> LLP  
2200 American Savings Bank Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand, Esq.

<Case & Ichiki>  
<2200 Pacific Tower>  
<1001 Bishop Street>  
<Honolulu, Hawaii 96813>

**If to KPD:**

Kapolei Property Development LLC  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: President

**with a copy to:**

Carlsmith Ball LLP  
2200 American Savings Bank Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand, Esq.

**If to the State:**

Administrative Director of the Courts  
State of Hawaii  
417 South King Street  
Honolulu, Hawaii 96813

Comptroller  
Department of Accounting and  
General Services  
State of Hawaii  
1151 Punchbowl Street, Room 410  
Honolulu, Hawaii 96813

with copies to:

Chairman  
Department of Land and Natural Resources  
State of Hawaii  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813

Department of the Attorney General  
Land/Transportation Division  
465 South King Street, Room 300  
Honolulu, Hawaii 96813  
Attention: Supervising Attorney

or, in each case, to any address as may hereunder have been designated most recently. Any communications so mailed shall be deemed delivered four (4) business days after mailing.

15. ~~<12.—~~No Party Deemed Drafter. No party shall be deemed the drafter of this agreement. If this agreement is ever construed by a court of law, such court shall not construe this agreement or any provisions hereof against any party as drafter.

16. ~~<13.—~~Binding Effect. This agreement and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors, successors in trust and permitted assigns of the parties hereto. Any liability which may ~~<arise>~~arises as a consequence of the execution of this instrument by or on behalf of the Trustees Under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and its successors, successors in trust and assigns, and not the personal liability of any trustee, officer or employee of the Estate of James Campbell.

17. ~~<14.—~~Estate Authority. This agreement is subject to the approval of the Trustees Under the Will and of the Estate of James Campbell, Deceased.

18. ~~<15.—~~Time of the Essence. Time is of the essence of this agreement.

19. ~~<16.—~~Governing Law. This agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

20. ~~<17.—~~Paragraph Headings. The use of any pronoun herein shall include any and all pronouns and the singular shall include the plural and vice versa, as the context may require. Paragraph headings are inserted only for convenience in reference.

21. ~~<18.—~~Counterparts. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

22. ~~<19.—~~Entire Agreement. This agreement and the Exhibits attached hereto are intended to clarify that certain Document Evidencing Petitioner's Commitments dated April 11, 1989, supersede the September Letter Agreement and the June 1998 Letter Agreement as to Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6, and constitute the entire agreement of the parties with respect to the matters set forth herein regarding Parcels 4 and ~~<5.>~~5, now Lot 80001-C-1, and the acreage to be included in Parcels 2 and 6.

23. ~~<20.—~~Amendments. Any amendments to this agreement shall be in writing and signed by the parties hereto.

[Remainder of this page left intentionally blank.]



<Approved as to Form>  
<Carlsmith Ball Wichman>  
<Case & Ichiki>

<B < \_\_\_\_\_>  
y>

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->

< \_\_\_\_\_>  
->

Very truly yours,

Steven H. MacMillan  
Chief Executive Officer

APPROVED:

TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF JAMES CAMPBELL,  
DECEASED, acting in their fiduciary and  
not in their individual capacities

Approved as to Form  
Carlsmith Ball LLP

By \_\_\_\_\_

KAPOLEI PROPERTY DEVELOPMENT LLC

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

Agreed and accepted:

THE JUDICIARY, STATE OF HAWAII

By

Thomas R. Keller

Administrative Director of the Courts

APPROVED AS TO FORM:

Susan Gochros

Judiciary Staff Attorney

BOARD OF LAND AND NATURAL  
RESOURCES

By

Peter T. Young

Its Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES

By

Russ K. Saito

Its Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

Compared v22/v51

4839-8549-8368.51.054438-00062

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13.

BLNR - Acquisition of Lands for Hawaii State Judiciary

**EXHIBIT C**

October 27, 2006

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<LAND COURT SYSTEM>

<REGULAR SYSTEM>

<Return by  
Mail>

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<Pickup>

☐

<To:>

<— CARLSMITH BALL WICHMAN>

<— CASE & ICHIKI>

<— 1001 Bishop Street, Suite 2200>

<— Honolulu, Hawaii 96813>

<— Attention: Robert E. Strand, Esq.>

<— Telephone: 523-2500>

<TITLE OF DOCUMENT:>

<CITY OF KAPOLEI LIMITED WARRANTY DEED>

<WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES>

<PARTIES TO DOCUMENT:>

<GRANTOR:> <Trustees Under the Will and of the Estate of James Campbell, Deceased>

<1001 Kamokila Boulevard>

<Kapolei, Hawaii 96707>

<GRANTEE:> <State of Hawaii, by its Board of Land and Natural Resources>

<1151 Punchbowl Street>

<Honolulu, Hawaii 96813>

<PROPERTY >Lot \_\_\_\_\_, Map \_\_\_\_\_, L.C.App. 1069, TCT No. \_\_\_\_\_>

AFFECTED:> <Tax Map Key: Oahu 9-1-\_\_\_\_ (This document consists of \_\_\_\_\_ pages.)>

<EXHIBIT "B">

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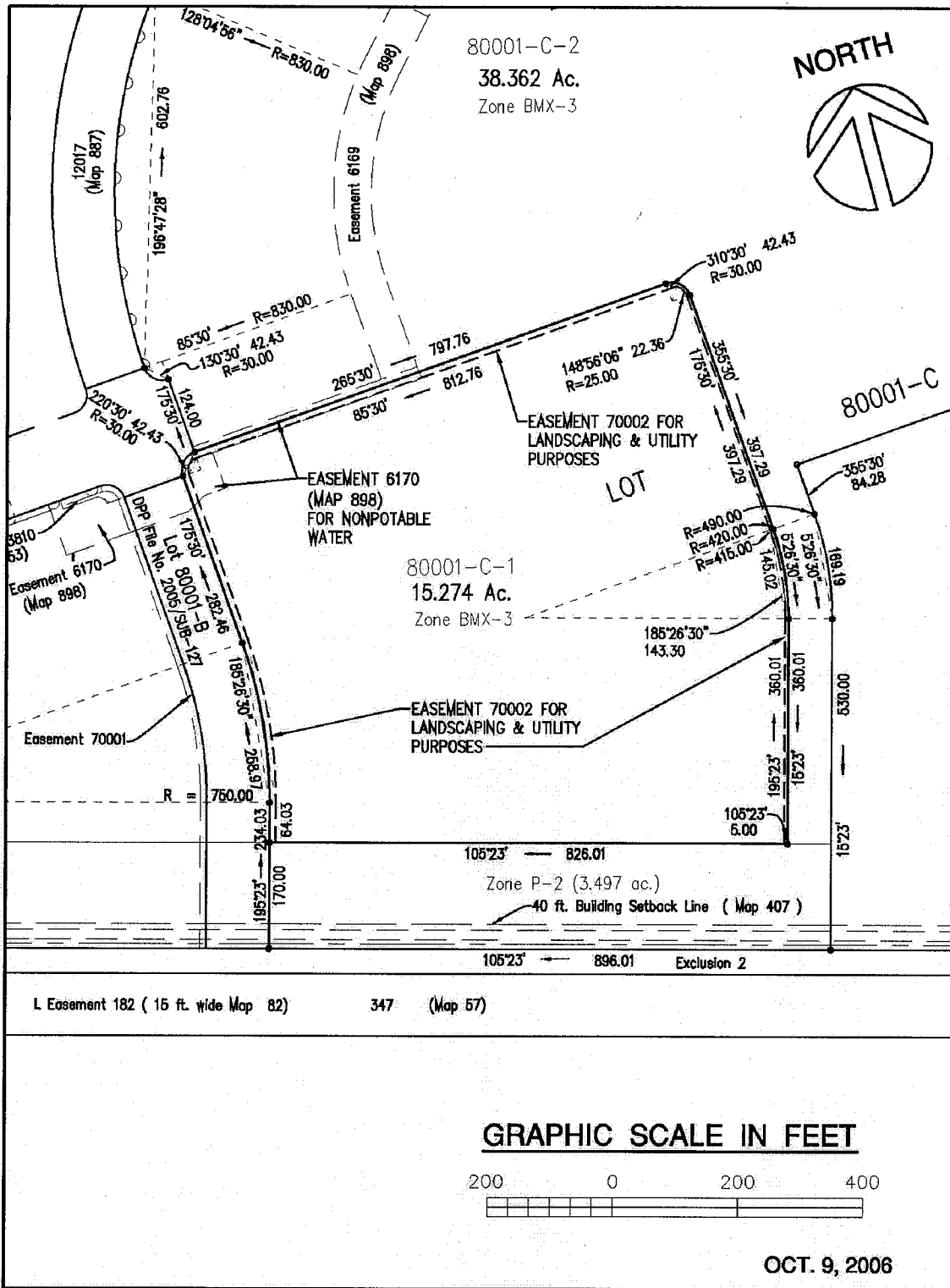
BLNR - Acquisition of Lands for Hawaii State Judiciary

**EXHIBIT C**

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Oct 09, 2006 - 10:02am  
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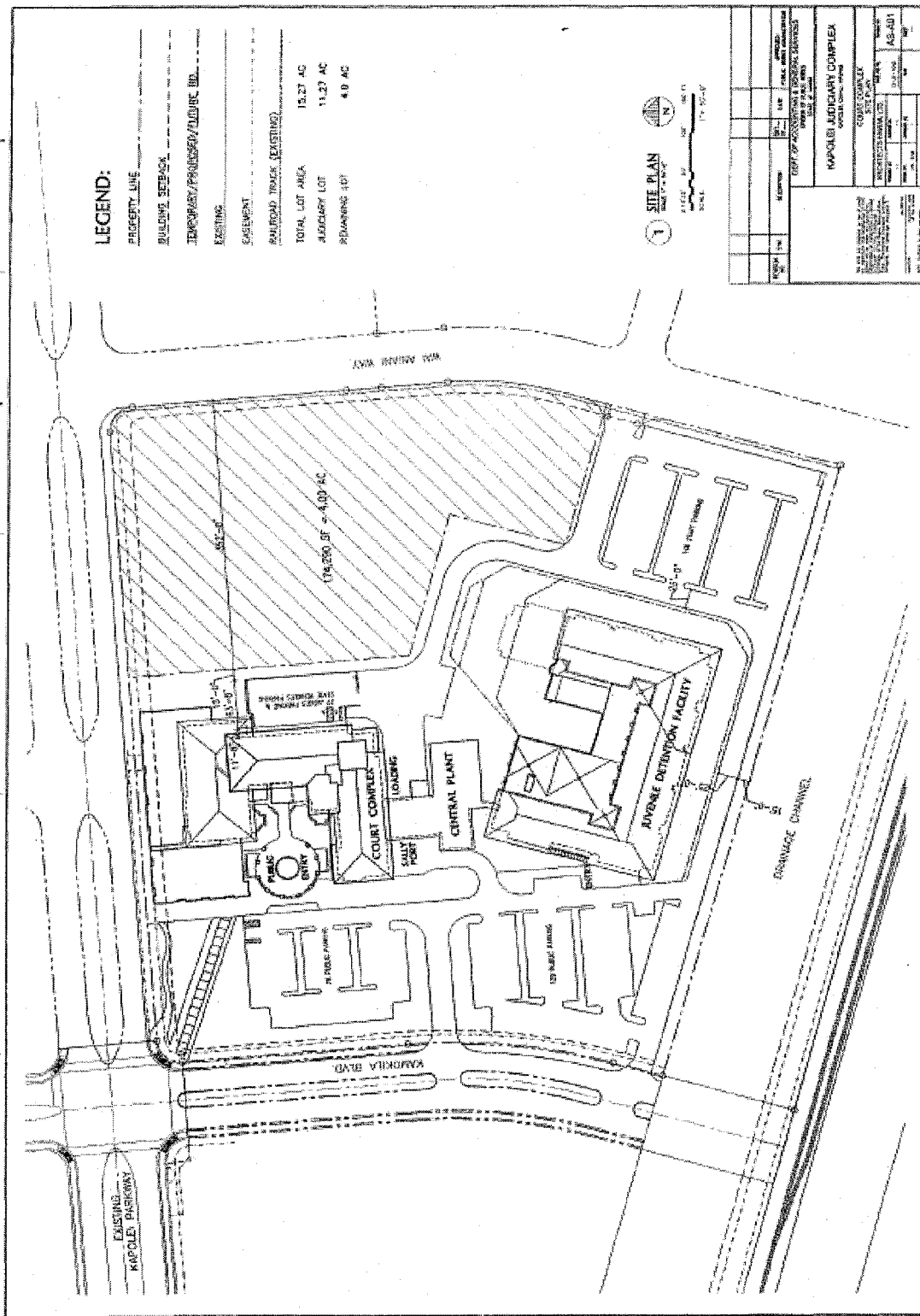


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Exhibit "A"

EXHIBIT C

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Exhibit "A-1"

BLNR - Acquisition of Lands for Hawaii State Judiciary

**EXHIBIT C**

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LAND COURT

REGULAR SYSTEM

Return By ☐ Pick- ☐ To:  
Mail Up

CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

Attention: Robert E. Strand  
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

CITY OF KAPOLEI LIMITED WARRANTY DEED  
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES

PARTIES TO DOCUMENT:

GRANTOR: KAPOLEI PROPERTY DEVELOPMENT LLC  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707

GRANTEE: STATE OF HAWAII, by its Board of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

TAX MAP KEY(S): Oahu 9-1- : (This document consists of pages.)  
Lot 80001-C-1, Map , L.C.App. 1069, TCT No.

**CITY OF KAPOLEI LIMITED WARRANTY DEED  
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

KNOW ALL MEN BY THESE PRESENTS:

THIS INDENTURE is made this        day of                     , 1999, by and between the ~~TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED~~, acting in their fiduciary and not in their individual capacities >        day of                     , 200  , by and between the KAPOLEI PROPERTY DEVELOPMENT LLC, a Hawaii limited liability company, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, hereinafter called the "Grantor", and the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "Grantee",

**WITNESSETH:**

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, the property described in Exhibit "A" attached hereto and made a part hereof, subject to the encumbrances and reservations set forth in said Exhibit "A" and to the covenants, rights, reservations, exceptions, obligations, duties and agreements set forth below (the "Property").

And the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto.

TOGETHER WITH non-exclusive easements appurtenant to the Property for access purposes over and across <Easement> Easements "3" > 1" and <Easement "4" > 2"<> as shown on Map       , filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, together with the right to construct, reconstruct,

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4839-8549-8368.51.054438-00062  
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2.

install, reinstall, operate, repair and maintain driveway improvements within said Easements "~~3~~1" and "~~4~~2"; provided that (i) such improvements in Easements "~~3~~1" and "~~4~~2" will not have a material adverse impact on the design or use of improvements planned for or existing therein, (ii) after performing any work in Easements "~~3~~1" or "~~4~~2", Grantee shall return the land to its original condition to the extent that such restoration is reasonably possible without adversely affecting any driveway improvements constructed thereon, ~~and~~ (iii) Grantor shall have the right to review and comment on any improvements in Easements "~~3~~1" and "~~4~~2" prior to the construction of such improvements and Grantee shall reasonably coordinate the location and construction of such improvements with the Grantor, and (iv) Grantee shall not be responsible for maintaining any part of Easements "1" or "2" other than any driveway or other improvements Grantee constructs thereon. Said easements will terminate automatically as to any portion of said Easements "~~3~~1" ~~and~~ or "~~4~~2" upon Grantor's dedication to, and acceptance thereof as a public highway by, any governmental authority, Grantor reserving the right to so dedicate the same without notice to or the joinder of Grantee: provided that the public highway provides access to the Property through the then-existing driveways.

~~<[TOGETHER WITH AND SUBJECT TO that certain unrecorded Lot \_\_\_\_\_~~  
Ground Lease dated as of \_\_\_\_\_, 1999 made by and between the Grantor, as  
Landlord, and \_\_\_\_\_, a Hawaii \_\_\_\_\_, as Tenant, a short form of  
which is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as  
Land Court Document No. \_\_\_\_\_ and noted on Certificate of Title No. \_\_\_\_\_ issued \_\_\_\_\_ to  
Grantor. Note: Include if applicable.]>

EXPRESSLY EXCEPTING AND RESERVING UNTO GRANTOR, ITS  
SUCCESSORS, ~~<SUCCESSORS IN TRUST>~~ AND ASSIGNS, the ~~<following>~~

~~<A. All of the rights excepted and reserved unto Grantor, and its successors, successors in trust and assigns as Declarant under that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, and \_\_\_\_\_, 1999, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507 and \_\_\_\_\_, respectively, as the same may be amended from time to time (collectively the "Declaration"). Grantee shall use reasonable efforts to comply with the Signage Guidelines attached as Exhibit "G" to the Declaration subject to such modifications as are consented to by the Grantor, which consent shall not be unreasonably withheld; and <B. \_\_\_\_\_ The >right< of Grantor> to grant or relocate in, on, over, under, across and through those portions of the Property designated as Easement "<1>70002", as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (the landscaping easement along the boundaries of the Property) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance, repair and replacement of underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, upon such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement "<1>70002" will not have a material adverse impact on the design or use of improvements planned for or existing on the Property or Easements "1" and "2", (ii) after performing any work in Easement "<1>70002", Grantor or such grantees shall restore the Property ~~<to its original condition>~~ and Easements "1" and "2" to the condition they were in prior to the performance of work in Easement "70002" to the extent that such restoration is~~

reasonably possible, ~~and~~ (iii) Grantee shall have the right to review and comment on any improvements in Easement "<1>70002" prior to the construction thereof, and the Grantor shall reasonably coordinate the location and construction of such improvements with the Grantee, and (iv) Grantee shall not be obligated to pay any costs or expenses regarding the grant of any easements under this paragraph or to construct, repair or maintain any of the lines, facilities, appurtenances, or other improvements constructed, installed, or operated by the grantees under any such agreements. Without limiting the foregoing, the Grantor reserves the right to grant easements within Easement "<1>70002" to the Association created under the Declaration for the purpose of landscaping and/or such other purpose as the Grantor deems appropriate; and

~~<C. The right of Grantor to grant or locate in, on, over, under, across or through those portions of the Property designated as Easement "2" (the non-potable water easement along Kamokila Boulevard) all easements now or hereafter required for the construction, installation, operation, maintenance, repair and removal of pipelines, tanks, reservoirs, pumps, meters, conduits, fire hydrants, control cable and other facilities, equipment, appliances and appurtenances for a non-potable water system in the City of Kapolei on such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the Grantee in connection with the acceptance of the same; provided that (i) such easements in Easement "2" will not have a material adverse impact on the design or use of improvements planned for or existing on the Property, (ii) after performing any work in Easement "3", Grantor or such grantees shall restore the Property to its original condition to the extent that such restoration is reasonably possible, and (iii) Grantee shall have the right to review and comment on any improvements in Easement "2" prior to the construction thereof, and the Grantor shall reasonably coordinate the location and construction of such improvements with Grantee; and>~~

~~<D. All rights of the Grantor under that certain unrecorded Lot Building Agreement dated as of \_\_\_\_\_, 1999, made by and between the Grantor and \_\_\_\_\_, a Hawaii~~



\_\_\_\_\_, a short form of which is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. \_\_\_\_\_ and noted on Certificate of Title No. \_\_\_\_\_ issued to Grantor. Note: Include if applicable.}]>

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the said Grantee, absolutely and in fee simple.

And for the consideration aforesaid, the Grantor, for ~~<themselves>~~ itself, ~~<their>~~ its successors and ~~<successors in trust, do>~~ assigns, does hereby covenant and agree with the Grantee, its successors and assigns, that the Grantor has done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid; and that the Property is free and clear of all liens and encumbrances made or suffered by the Grantor; and that the Grantor will and ~~<their>~~ its successors and ~~<successors in trust>~~ assigns shall, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through and under the Grantor, except as aforesaid.

SUBJECT, HOWEVER, to the following:

1. ~~<1.——~~ Grantee does hereby acknowledge that, by the acceptance and recordation of this deed, it (i) is familiar with and has examined the physical conditions of the Property and has agreed to accept the Property without any warranties or representations by Grantor except the limited warranties of title set forth above, and the reservations regarding environmental conditions as set forth below, and (ii) agrees and covenants to hold and shall hold, convey, encumber, use, occupy and improve the Property subject to the terms, covenants, conditions, reservations and restrictions contained herein, and shall not use or permit the use of the Property in violation thereof. Grantor acknowledges that Grantee does not release Grantor for any environmental remediation costs or other costs or damages resulting from contamination

of the Property or Easements "1" and "2" prior to the date hereof unless such contamination has occurred by or through Grantee.

2.     ~~2.~~—The Property shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on the Property. The term "governmental offices and other public facilities" may include a ~~<Family Court Center and a Juvenile Detention Center, which can be expanded later to also include Circuit Court and District Court facilities and services>~~ court building and juvenile detention facility (including ancillary central plant structures). The Property shall not be used for any other purposes without the prior written consent of Grantor, which consent may be withheld by the Grantor in its sole discretion for any reason. If Grantee breaches the foregoing use restriction, Grantee acknowledges the Grantor may pursue a claim for damages against Grantee for such breach but not for a reverter of the Property to Grantor or the remedies of specific performance or injunctive relief, and Grantor's damages for such breach shall be limited to actual (but not consequential) damages, which Grantor agrees shall not exceed the fee simple fair market value of the Property at the time of such breach, exclusive of any buildings, and unencumbered by any lease or any use restriction.

3.     ~~3.~~—Grantor shall have the right, without the consent of but with notice to Grantee, to assign or partially assign any or all of the rights, reservations and exceptions, held by Grantor hereunder, ~~<contained in paragraphs A, B and C above,>~~ to the "Declarant" or to the "Association", as these terms are defined in the Declaration.

4.     ~~4.~~—~~Grantee acknowledges that Grantor is developing nonpotable "caprock" water to irrigate the common areas of the City of Kapolei. The Grantor intends in the future to complete and to turn over a nonpotable water system to the Board of Water Supply of~~

~~the City and County of Honolulu ("BWS") or the City of Kapolei Community Association, Inc. ("Association"). This completion and dedication can occur when a source of nonpotable water of reliable quality can be assured to BWS or the Association. The Grantee agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is feasible, including, without limiting the generality of the foregoing, development of a nonpotable water system on the Property and connecting such system to the nonpotable water system for the City of Kapolei within one <(1) year after the later to occur of: receipt of notice from the Grantor of the availability of such system, and>~~ hundred twenty (120) days after the completion of construction of the court building and juvenile detention facility (including ancillary support structures) on the Property or, if applicable, completion of Grantee's first building on the Property if Grantee does not construct a court building or juvenile detention facility. Notwithstanding the foregoing, the Grantee shall not drill for water on the Property without obtaining Grantor's prior written consent, which consent may be withheld in the Grantor's sole discretion. Any external water features, including but not limited to ponds, streams, fountains and water falls on the Property shall use nonpotable water whenever the same is reasonably available. Grantee's landscaping and ground cover shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources; provided, however, that Grantee may use St. Augustine grass for ground cover on the Property. The Grantee authorizes the Grantor to obtain water consumption records pertaining to the Property from the BWS or any other Governmental Authority or private entities providing water to the Property, and agrees to provide the Grantor written authorization to do so if so required.

**5. That certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant**

Compared v22/v51  
4839-8549-8368.51.054438-00062  
DRAFT 10/12/06

Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006 filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 248739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively, as the same may be amended from time to time (collectively the "Declaration"). The Grantor's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company ("New Declarant"), by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. Grantee shall use reasonable efforts to comply with the Signage Guidelines attached as Exhibit "G" to the Declaration subject to such modifications as are consented to by the New Declarant, which consent shall not be unreasonably withheld.

6.     ~~5.~~—Any word, term or phrase which begins with initial capitalization and which is not defined in this deed, shall be given the definition of such word, term or phrase in the Declaration.

7.     ~~6.~~—Any liability which may arise as a consequence of the execution of this Indenture by or on behalf of Grantor shall be a liability of the Estate of James Campbell, Deceased, and not the personal liability of any trustee or employee of the Estate of James Campbell.>

8.     ~~7.~~—The Grantor and Grantee hereby acknowledge and agree that all of the rights, reservations and exceptions contained in paragraphs A, B and C above shall be

~~covenants running with the land and shall be binding upon Grantor and Grantee pursuant to paragraph 8 below.>~~

9. ~~<8.~~—The foregoing rights, reservations, exceptions, obligations, duties and agreements of Grantor and Grantee shall be deemed covenants running with the land, binding upon Grantor and Grantee, and their respective successors~~<, successors in trust,>~~ and assigns, for a period commencing with the filing of this deed in the Office of the Assistant Registrar of the Land Court of the State of and continuing for as long as the Declaration shall be in effect as to the City of Kapolei, all as more fully described in Article 2.2(III) of the Declaration, the terms of which article are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be  
duly executed on the day and year first above written.

~~<TRUSTEES UNDER THE WILL AND OF  
THE ESTATE OF JAMES CAMPBELL,  
DECEASED, acting in their fiduciary and not in  
their individual capacities>~~

<Approved as to Form>  
<Carlsmith Ball Wichman>  
<Case & Ichiki>

<By \_\_\_\_\_>  
y>  
<Robert E. Strand>

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<"Grantor">

KAPOLEI PROPERTY DEVELOPMENT LLC,  
a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii  
corporation, its member manager

Approved as to Form  
Carlsmith Ball LLP

By \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
"Grantor"

STATE OF HAWAII, by its Department of  
Land and Natural Resources

By \_\_\_\_\_  
Chairperson, Board of Land and  
Natural Resources

<By \_\_\_\_\_>

APPROVED AS TO FORM:

<Chairperson, Board of Land and

By \_\_\_\_\_  
Deputy Attorney General

By \_\_\_\_\_  
Member, Board of Land and Natural  
Resources

<B \_\_\_\_\_>  
y>

<Deputy Attorney General>

<By \_\_\_\_\_>

<Member, Board of Land and Natural  
<Resources>

Date : \_\_\_\_\_

"State"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

1  
<><> SS 1 ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_ <=>, <19\_\_> 200, before me personally  
appeared \_\_\_\_\_ <=> \_\_\_\_\_ <=> and  
\_\_\_\_\_, ~~TRUSTEES UNDER THE WILL AND OF THE ESTATE OF~~  
~~JAMES CAMPBELL, DECEASED~~, to me known to be the persons described in and who  
severally > \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory  
evidence, who, being by me duly sworn or affirmed, did say that such persons executed  
the foregoing instrument <=> and severally acknowledged that they executed the same as their > as  
the free act and deed <as such Trustees> of such persons, and if applicable in the capacity  
shown, having been duly authorized to execute such instrument in such capacity.

<=>

Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_



## EXHIBIT "A"

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT ~~<=>~~ 80001-C-1, area ~~<13.5>~~ 15.274 acres, as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by **Certificate of Title No. <\_\_\_\_\_, issued to the Trustees under the Will and of the Estate of James Campbell, Deceased> \_\_\_\_\_, issued to Kapolei Property Development LLC, a Hawaii limited liability company.**

SUBJECT, HOWEVER, to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.

2. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, ~~<and \_\_\_\_\_, 1999,>~~ September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, ~~<and \_\_\_\_\_,~~ respectively >2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829.

3. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119177.

4. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119179.

5. <Designation of Easement "1" (\_\_\_\_\_square feet) for landscaping purposes, as shown on Map \_\_\_\_\_, as set forth by>Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, filed in said Office of the Assistant Registrar as Land Court <Order> Document No. \_\_\_\_\_, filed \_\_\_\_\_  
>3195672.

6. Designation of Easement "<2" (\_\_\_\_\_square feet)>6170" for non-potable water utility purposes, as shown on <Map \_\_\_\_\_>Maps 898 and 1055, as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_.

<[7. Unrecorded Lot \_\_\_\_\_ Building Agreement dated as of \_\_\_\_\_, 1999, made by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased, and \_\_\_\_\_, a Hawaii \_\_\_\_\_, a short form of which is filed in the>7. Grant of Non-Exclusive Easements in favor of the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu dated December 30, 2004, filed in said Office of the Assistant Registrar <of the>as Land Court <of the State of Hawaii as> Document No. \_\_\_\_\_, Note: Include \_\_\_\_\_ if applicable.]>3228386.

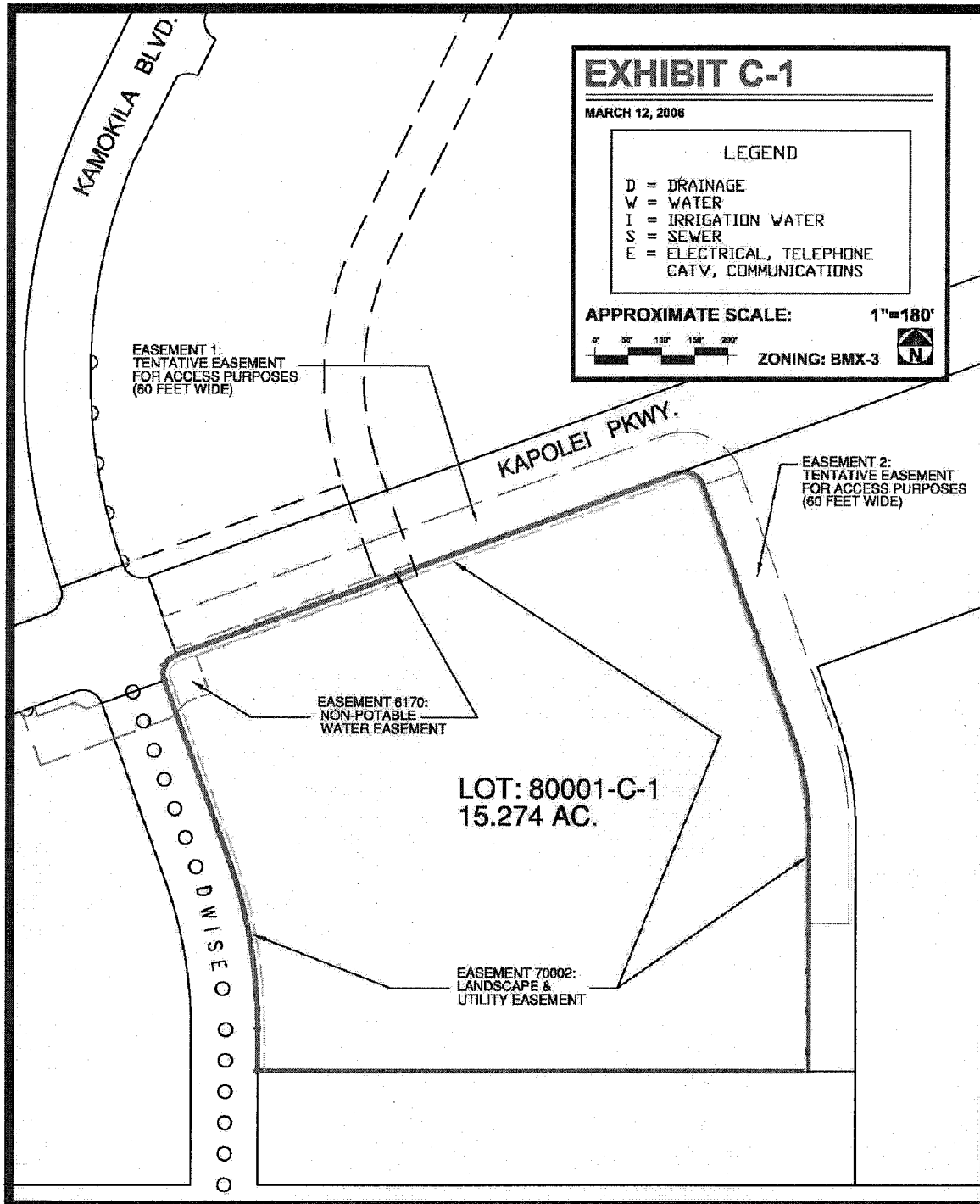
<[8. Unrecorded Lot \_\_\_\_\_ Ground Lease dated as of \_\_\_\_\_, 1999, made by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased, and \_\_\_\_\_, a Hawaii \_\_\_\_\_, as Tenant, a short form of which is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_, Note: Include if applicable.]>

8. Designation of Easement "70002" (\_\_\_\_\_square feet) for landscaping and utility purposes, as shown on Map \_\_\_\_\_, as set forth by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_.

9. Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictive Covenants, Conditions and Restrictions (Government Use) dated \_\_\_\_\_, 200\_\_\_\_, filed in said Office as Land Court Document No. \_\_\_\_\_.

End of Exhibit "A"

**EXHIBIT "C-1"**



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**Exhibit "C-1"**

**EXHIBIT C**

EXHIBIT "C-2"

<PARCELS 4 AND 5> LOT 80001-C-1 OFF-SITE IMPROVEMENTS

1. Interim Improvement.

<The Estate> KPD shall provide access to <Parcels 4 and 5> Lot 80001-C-1 sufficient to permit the commencement of construction of the Required Improvements <(as described in> or the Modified Required Improvements, as the <Ground Lease> case may be, on the Property. This access may not be paved or of a permanent nature, and <the Estate> KPD reserves the right, from time to time, with reasonable notice to the State (not less than 15 calendar days), to relocate this temporary access in order to facilitate construction of other improvements in the City of Kapolei. KPD shall cooperate with the State as reasonably necessary to obtain governmental permits and approvals for the construction of the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements to Easements "1" and "2" provided that the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements are in compliance with the State's obligations under the letter agreement to which this Exhibit "C-2" is attached and such cooperation is at no cost to KPD.

2. Permanent Improvements.

<The Estate> KPD covenants and agrees to provide the following <Estate> KPD improvements prior to the completion of construction of the Required Improvements or the Modified Required Improvements, as the case may be, subject to extensions of time for delays in the completion of such improvements caused by force majeure:

a. Paved Access. In order to provide reasonable access to and from <Parcels 4 and 5, the Estate> Lot 80001-C-1, KPD shall extend Kamokila Boulevard to the Renton Road <intersection and construct the portion of the Kapolei Parkway that runs along the northern boundary of Parcels 4 and 5. The Estate> alignment intersection. KPD will provide curbs, gutters and sidewalks along Kamokila Boulevard <and Kapolei Parkway. Any developer of a building on Parcels 4 and 5 shall be responsible for and shall pay for all>. KPD will also provide along the extension of Kamokila Boulevard two (2) curb cuts with related driveway aprons in the locations set forth on Exhibit "C-3" attached hereto and incorporated herein by reference. If Waianiani Way is constructed, the entity completing such construction will provide curbs, gutters and sidewalks along any portion of Waianiani Way so constructed. If such construction extends through the entrance to Lot 80001-C-1 shown on Exhibit "A-1", the entity completing such construction shall also provide a curb cut and driveway apron for such entry. KPD shall not be responsible for any other curb cuts, driveways <and aprons from the paved access to Parcels 4 and 5 for such building> or aprons for the Required Improvements or the Modified Required Improvements, as the case may be.

b. Drainage. <The Estate> KPD will provide drainage improvements to serve <Parcels 4 and 5> Lot 80001-C-1 in Kamokila Boulevard incrementally as and when required to

accommodate buildings on ~~<Parcels 4 and 5>~~ Lot 80001-C-1. State will be responsible for all on-site drainage requirements including, but not limited to, NPDES requirements. If permanent drainage improvements to be constructed by KPD are not completed by the time the State begins construction of the Required Improvements or the Modified Required Improvements, as the case may be, temporary drainage meeting all applicable governmental requirements will be provided by KPD. The permanent and temporary off-site drainage improvements provided by KPD shall meet all applicable governmental requirements and accommodate the quantity of stormwater runoff generated from Lot 80001-C-1 based on the data provided by the State's consultants prior to September 1, 2006, and the State shall meet all applicable governmental requirements regarding the quality of the stormwater water runoff generated from Lot 80001-C-1.

c. Potable Water and Sewer Service: Fire Hydrants. ~~<The Estate>~~ KPD will install potable water and sewer lines in Kamokila Boulevard adjacent to ~~<Parcels 4 and 5>~~ or near Lot 80001-C-1. The potable water line will be connected to the Board of Water Supply's water main. The sewer line will be connected to the sewer main of the entity providing sewer service. ~~<The Estate>~~ KPD will allocate potable water for the ~~<first building on Parcels 4 and 5>~~ Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1 from a water source available to ~~<the Estate>~~ KPD based on Board of Water Supply standards ~~<Upon such allocation, the developer of the building will be required to pay to the Estate the water facilities charge set forth in the building agreement between the Estate and such developer>~~ but in no event exceeding 45,900 gallons of maximum day capacity. The State shall not be required to reimburse KPD or the Board of Water Supply for source, storage or transmission charges for such allocation. By letters dated August 7, 2006 and September 8, 2006, the Estate has agreed to allocate 57 ESDU's of sewage transmission capacity for the Required Improvements subject to the State's reimbursement to the Estate of \$280,468 for such allocation. The Estate's allocation obligation and right to receive reimbursement has been assigned to and assumed by KPD. It shall be State's responsibility to obtain and pay for any other costs associated with the connection to or the provision of potable water or sewer services to ~~<Parcels 4 and 5>~~ Lot 80001-C-1. While KPD shall install fire hydrants in Kamokila Boulevard as shown on KPD's construction plans approved by the City and County of Honolulu (the "City"), all other fire hydrants and fire protection facilities required for the Required Improvements or the Modified Required Improvements as the case may be, shall be designed and constructed at the State's expense.

d. Non-potable Water Line. ~~The <Estate is developing nonpotable "caprock" water to irrigate the common areas of the City of Kapolei. The Estate intends in the future to complete and to turn over a nonpotable water system to the Board of Water Supply ("BWS") or the City of Kapolei Community Association, Inc. ("Association"). This completion and dedication can occur when a source of nonpotable water of reliable quality can be assured to BWS or the Association. The >State agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is feasible, and to develop a nonpotable water system on <Parcels 4 and 5>~~ Lot 80001-C-1 and connect such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the <later to occur of: (a) receipt of notice from the Estate of the availability of such system, and (b) >completion of construction of the Required Improvements <on Parcels 4 and 5> or the Modified Required Improvements, as the case

may be, on Lot 80001-C-1. The Board of Water Supply has advised the State that non-potable water service will be available from an existing 16-inch R-1 main located in the Kamokila Boulevard extension fronting Lot 80001-C-1. The Board of Water Supply may impose a meter or other hook-up charge for this non-potable water which, together with any other costs associated with the connection or provision of non-potable water to Lot 80001-C-1, will be paid by the State. Notwithstanding the foregoing, the State shall not drill for water on ~~<Parcels 4 and 5>~~ Lot 80001-C-1 without obtaining ~~<the Estate>~~ KPD's prior written consent (which may be withheld in ~~<the Estate>~~ KPD's sole discretion.) Any external water features, including but not limited to ponds, streams, fountains and water falls shall use nonpotable water whenever the same is reasonably available. The landscaping and ground cover on ~~<Parcels 4 and 5>~~ Lot 80001-C-1 shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. The State authorizes ~~<the Estate>~~ KPD to obtain water consumption records pertaining to ~~<Parcels 4 and 5>~~ Lot 80001-C-1 from the BWS or any other governmental agencies or private entities providing water to ~~<Parcels 4 and 5>~~ Lot 80001-C-1, and agrees to provide ~~<the Estate>~~ KPD written authorization to do so if so required.

e. Other Utilities. ~~<The Estate>~~ KPD at its expense will install in Kamokila Boulevard~~< or Kapolei Parkway>~~ to the boundary of ~~<Parcels 4 and 5>~~ Lot 80001-C-1 a utility conduit system for electrical and telephone and cable television lines. It shall be the State's responsibility~~< to>~~, at its expense, to (i) pull the lines and install any other facilities required to provide electric, telephone and cable television service to, and (ii) contact the appropriate utility or provider for services in the conduit system to serve <Parcels 4 and 5> Lot 80001-C-1 and to pay for such services. KPD's infrastructure does not include gas lines. KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. KPD shall give the State at least forty-five (45) calendar days written notice prior to KPD's commencement of construction in Kamokila Boulevard.

f. Traffic Improvements. KPD shall make the following traffic improvements at its cost and expense: (i) install a traffic signal at the intersection of Kapolei Parkway and Kamokila Boulevard when warranted by traffic counts and approved by the City; (ii) provide a second (double) left-turn lane on the southbound approach of Kalaeloa Boulevard to Kapolei Parkway; (iii) provide an additional lane in the median area on the westbound approach of Kapolei Parkway to Kalaeloa Boulevard and re-stripe the westbound lanes to provide a left-turn lane, a right-turn lane, and a middle lane from which traffic can turn left or right or go straight through the intersection. The traffic improvements described in (ii) and (iii) above will be completed within two (2) years after KPD receives all required approvals and permits from the City for those improvements.

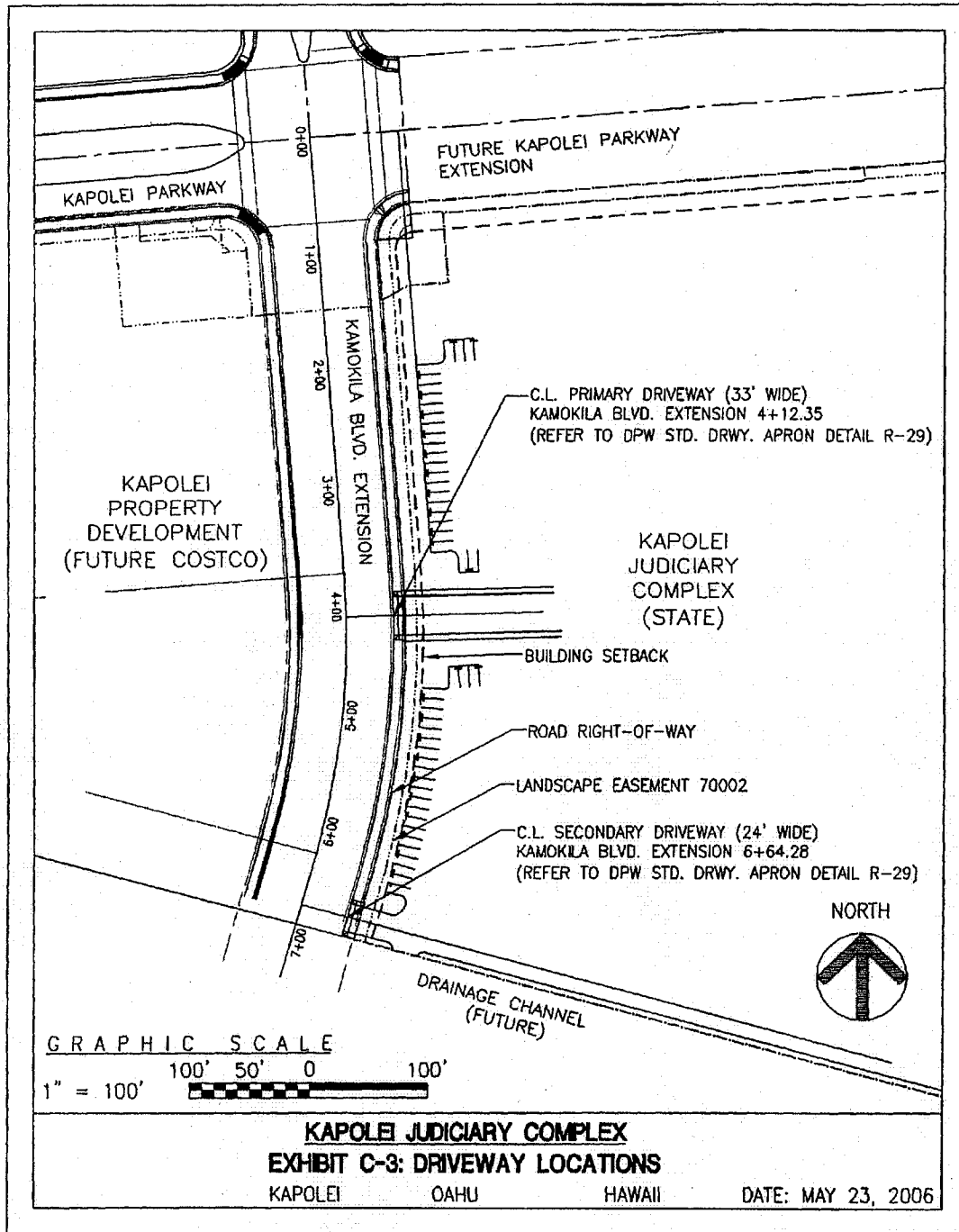
~~<The Estate>~~ KPD's obligations under this Exhibit "C-2" shall only be to provide such improvements as are necessary to service ~~<Parcels 4 and 5>~~ Lot 80001-C-1, and nothing herein shall be deemed or construed to require or otherwise obligate ~~<the Estate>~~ KPD to complete such infrastructure to any other portions of the City of Kapolei or to complete any other amenities or facilities of any kind or description in the City of Kapolei prior to the completion of the Required Improvements ~~<on Parcels 4 and 5>~~ or the Modified Required Improvements.

Compared v22/v51  
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DRAFT 10/12/06

as the case may be, on Lot 80001-C-1. Without limiting the foregoing, the State acknowledges that such infrastructure and other amenities or facilities for the City of Kapolei may not be completed within such time period; may be changed, modified or deleted from time to time in accordance with the provisions of the Declaration; and may not be constructed at all as to any portions of ~~<the Estate>~~ KPD's lands which are not annexed to the City of Kapolei. The State further acknowledges and agrees that ~~<the Estate>~~ KPD's construction of such infrastructure and other amenities or facilities may interfere with the State's use and enjoyment of ~~<Parcels 4 and 5>~~ Lot 80001-C-1 during the periods of such construction.

End of Exhibit "C-2"

**EXHIBIT ~~D~~ "C-3"**



Compared v22/v51  
 4839-8549-8368.51.054438-00062  
 DRAFT 10/12/06

Exhibit "C-3"

BLNR - Acquisition of Lands for Hawaii State Judiciary

**EXHIBIT C**

October 27, 2006  
 Page 38 of 53



<LAND COURT SYSTEM>

<REGULAR SYSTEM>

<Return by  
Mail>

☐

<Pickup  
>

☐

<To:>

<TITLE OF DOCUMENT:>

<SUPPLEMENTAL DECLARATION TO>  
<CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,>  
<CONDITIONS AND RESTRICTIONS>  
<(Government Use)>

<PARTIES TO DOCUMENT:>

<DECLARANT:> <C.R. CHURCHILL and D.A. HEENAN, the duly appointed, qualified and acting  
TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES  
CAMPBELL, DECEASED, acting in their fiduciary and not in their individual  
capacities>  
<1001 Kamokila Boulevard, Kapolei, Hawaii 96707>

<TAX MAP KEY(S):>

<(Oahu) 9-1-16: Parcels 52; 53; 54 (por.); and 97>  
<(Oahu) 9-1-88: Parcels 01; 02; 03; 04; 05; 06; 07; 08; 09; 10; 11; and 13>  
<(Oahu) 9-1-106: Parcels 01; 02; 03; 04; 05; 06; 07; 08; 10; and 11>  
<Certificate of Title Nos. 15,790 (for Lots 7248; 7249-A; 7249-B; 7258; 7264 and 7265);  
410,865; 422,474; 422,475; 422,476; 422,478; 422,482; 422,483; 443,350; 446,646; 448,543;  
448,544; 448,545; 448,546; 475,093; 475,094; 488,409; 493,718; 493,719; 495,675; 495,676;  
496,527; 497,575; 497,576; 497,577; 497,578; 497,579; 497,580; 497,581 and 497,582 [subject  
to verification]>

<\_\_\_\_\_ (This document consists of \_\_\_\_ pages)>

LAND COURT

REGULAR SYSTEM

Return By ☐ Pick- ☐ To:  
Mail Up

CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Attention: Robert E. Strand  
Telephone: 523-2525

TITLE OF DOCUMENT:

SUPPLEMENTAL DECLARATION AND AMENDMENT TO CITY OF KAPOLEI DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
(Government Use)

PARTIES TO DOCUMENT:

DECLARANT: CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited liability  
company  
James Campbell Building, Suite 257, 1001 Kamokila Boulevard,  
Kapolei, Hawaii 96707

CONSENTING KAPOLEI PROPERTY DEVELOPMENT LLC, a Hawaii limited liability  
PARTY: company

TAX MAP KEY(S):

(Oahu) 9-1-016: parcels 034; 054(por.); 121 and 125  
(Oahu) 9-1-088: parcels 001 through 011; and parcels 013 through 018  
(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016  
(Oahu) 9-1-118: parcels 001 through 009  
Certificate of Title Nos. 422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;  
569,438; 576,046; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,144; 600,145;  
600,146; 600,147; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155;  
600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165;  
600,166; 600,287; 619,022; 631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;  
674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,011; 806,012; 806,013;  
806,014; and 807,561.

(This document consists of pages.)

Compared v22/v51  
4839-8549-8368.51.054438-00062  
DRAFT 10/12/06

Exhibit "D"

**EXHIBIT C**

October 27, 2006  
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**SUPPLEMENTAL DECLARATION AND AMENDMENT TO  
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

(Government Use)

THIS SUPPLEMENTAL DECLARATION, dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made by ~~the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED~~, acting in their fiduciary and not in their individual capacities, CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited liability company (the "Declarant"), whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

**R E C I T A L S:**

WHEREAS, ~~<Declarant has>~~ as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as ~~<modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995 March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998 and December 9, 1998, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739 and 2506094, respectively [description of the Declaration subject to revision to include all other modifications filed in Land Court prior to execution of this instrument], as>~~ the same has been and may be amended and/or modified from time to time (collectively the "Declaration") ~~<all noted on Certificate of Title Nos. 15,790 (for Lots 7248; 7249 A; 7249 B; 7258; 7264 and 7265); 410,865; 422,474; 422,475; 422,476; 422,478; 422,482; 422,483; 443,350; 446,646; 448,543; 448,544; 448,545; 448,546; 475,093; 475,094; 488,409; 493,718; 493,719; 495,675; 495,676; 496,527; 497,575; 497,576; 497,577; 497,578; 497,579; 497,580; 497,581 and 497,582 [subject to revision to include changes prior to execution of this instrument]; and>~~ and

WHEREAS, ~~<Declarant>~~ by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto <itself in Section 3.3 of the Declaration, the right, power and authority to Annex portions of the Benefitted Lands to the Land and thereby subject such Annexed parcels to the Declaration on such terms and conditions as the Declarant deems appropriate> said Trustees' as the original Declarant under the Declaration; and

WHEREAS, ~~<Declarant>~~ Kapolei Property Development LLC, a Hawaii limited liability company, is the Owner of Lot ~~<[Parcel 4] and Lot [Parcel 5], both>~~ 80001-C-1, as shown on Map \_\_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in Exhibit 1 attached

hereto and incorporated herein by this reference (~~each an "Annexed Lot" or collectively the "Annexed Lots";~~ the "Annexed Lot"; and

WHEREAS, ~~<the Annexed Lots are a portion of the Benefitted Lands;~~ although the Annexed Lot is not currently a part of the Benefitted Lands, to the extent that Declarant may only Annex a legal Lot, Declarant intends to hereby Amend the definition of "Benefitted Lands" in the Declaration to conform such definition to include all of the Annexed Lot; and

WHEREAS, Declarant reserved unto itself in Section 3.1 (Amendment To Declaration) of the Declaration, the right, power and authority to Amend the Declaration to correct any technical defects or to make non-substantive changes, such as the Amendment described in the immediately preceding recital; and

WHEREAS, Declarant reserved unto itself in Section 3.3 (Annexation) of the Declaration, the right, power and authority to Annex portions of the Benefitted Lands to the Land with the Consent of the Owner of the applicable Benefitted Land, and thereby subject such Annexed parcels to the terms of the Declaration; and

WHEREAS, as a condition of rezoning of the Annexed Lot from zoning designation Ag-1 to zoning designation B-2, the City and County of Honolulu required that the Annexed Lot be developed in conformance with the City of Kapolei Urban Design Plan, as amended from time to time; and

WHEREAS, Declarant intends to Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration and to the City of Kapolei Urban Design Plan;

WHEREAS, ~~<Declarant>~~ Owner intends to convey the fee simple interest in the Annexed ~~<Lots>~~ Lot to the State of Hawaii for government use only in partial satisfaction of its obligations under that certain Findings of Fact, Conclusions of Law and Decision and Order entered by the State of Hawaii Land Use Commission dated September ~~<23, 1988>~~ 23, 1988, as amended, reclassifying certain lands situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii from Agricultural District to Urban District and subject to the Declaration as heretofore and hereby amended; and

WHEREAS, Declarant intends to now Annex the Annexed ~~<Lots>~~ Lot to the Land and thereby subject the same to the terms of the Declaration, as modified hereinbelow;

NOW THEREFORE, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. ~~<1.——Declaration; Annexation of Annexed Lot to Declaration.~~ Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, as of the Effective Date (defined in paragraph 3 below) Declarant does hereby Annex the Annexed ~~<Lots>~~ Lot described in Exhibit 1 to the Land. For all purposes set forth in Section 1.2 of the Declaration, or otherwise expressly set forth or implicit in the Declaration, Declarant declares that the Annexed ~~<Lots are>~~ Lot is and shall be from the Effective Date and throughout the Term developed, maintained, utilized, operated and Transferred subject to any and all of the

protective covenants, conditions and restrictions set forth in the Declaration. The Declaration shall attach to the title to the Annexed ~~<Lots>~~Lot, inure to the benefit of each Owner, and run with such title throughout the Term, being binding upon and Enforceable against every Owner and Occupant.

2. ~~<2.—~~Use of the Annexed <Lots>Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby declare that the Annexed ~~<Lots>~~Lot shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings included in the Approved Improvements constructed on the Annexed ~~<Lots>~~Lot. The term "governmental offices and other public facilities" may include a ~~<Family Court Center and a Juvenile Detention Center, which can be expanded later to also include Circuit Court and District Court services>~~court building and a juvenile detention facility (including ancillary central plant structures). The foregoing uses are deemed to be government use for purposes of the Declaration, and at all times during such use, the Annexed ~~<Lots>~~Lot shall not be deemed to be a part of the Development Land. If after the completion of construction of any Approved Improvements on the Annexed ~~<Lots, one or both of>~~Lot, the Annexed ~~<Lots cease>~~Lot ceases, at any time and from time to time, to be used for government use as required under this paragraph 2, then during all times that ~~<an>~~the Annexed Lot is not used for such government use, the Annexed Lot shall automatically and without further action by Declarant or the Owner of the Annexed Lot: (i) be deemed to be used for commercial purposes and deemed to be a part of the Development Land; (ii) have Floor Area and Units computed in accordance with the provisions of Section 5.4 of the Declaration and based upon the Approved Improvements, notwithstanding the fact that there is not a minimum Floor Area and Units shown on Exhibit "D" to the Declaration; and (iii) the Owner of the Annexed Lot shall be required to pay all Assessments of any type assessed against the Annexed Lot under the Declaration during such periods. During any such periods that ~~<an>~~the Annexed Lot is not used for government use as set forth herein, the Owner of the Annexed Lot shall also have voting rights as a Member of the Association, as and to the extent set forth in the Declaration.

3. ~~<3.—~~Effective Date. The effective date ("Effective Date") of this Supplemental Declaration shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

4. ~~<4.—~~Amendment to Exhibit A of Declaration. Under Section 3.1 of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of ~~<Benefitted>~~Benefitted Lands is Annexed to the Land pursuant to Section 3.3 of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "A" of the Declaration by adding thereto the legal description of the Annexed Lots attached hereto as Exhibit 1, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

5. ~~<5.—~~Amendment to Exhibit D of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit "D" of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D" of the Declaration by deleting in its entirety every previous Exhibit "D" and substituting therefor the

revised Exhibit "D" attached hereto as Exhibit "D" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

6. ~~<6.~~ Amendment to Exhibit D-1 of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D-1" of the Declaration by deleting in its entirety every previous Exhibit "D-1" and substituting therefor the revised Exhibit "D-1" attached hereto as Exhibit "D-1" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

7. ~~<7.~~ Modification of Declaration as to Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed ~~<Lots>~~ Lot. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 7, the provisions of this paragraph 7 shall control.

7.1. ~~<7.1.~~ No Assessments. During all periods that (i) ~~<an>~~ the Annexed Lot is used for government use as set forth in paragraph 2 above and (ii) the State of Hawaii has any interest in the Annexed Lot, the State of Hawaii shall be exempt from paying General, Special or Subdistrict Assessments on the Annexed Lot, whether past, present or future, and including, without limitation, any Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration.

7.2. ~~<7.2.~~ No Reimbursements. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Reimburse the Board, the Association, the Declarant or any other Party under the Declaration.

7.3. ~~<7.3.~~ No Indemnity. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Indemnify the Board, the Association, the Declarant or any other Party under the Declaration.

7.4. ~~<7.4.~~ No Liens. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii's interest in the Annexed Lot shall not be subject to any lien under the Declaration.

7.5. ~~<7.5.~~ Non-Disturbance and Attornment. During all periods that the State of Hawaii is the sublessee of ~~<an>~~ the entire Annexed Lot: (a) the State of Hawaii shall not be deemed to be the Owner of the Annexed Lot; and (b) if the Declarant or the Board (on behalf of the Association) forecloses on any lien arising under the Declaration against the interests of the Owner of the Annexed Lot, the interest of the State of Hawaii, as such sublessee, shall not be disturbed so long as (i) the State of Hawaii is not in default of its obligations under such sublease and (ii) the State of Hawaii agrees to attorn to any Party who succeeds to such Owner's interest in the Annexed Lot upon the request of such Party.

7.6. ~~<7.6—~~Cure Periods. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii and the Owner of the Annexed Lot (if other than the State of Hawaii) shall have one hundred twenty (120) days, running concurrently, to complete any actions required of them under Notices given pursuant to Sections 6.6 or 7.9 of the Declaration (subject to further extension as provided for in such Sections), rather ~~<that>~~ than the sixty (60) day periods specified in such Sections.

7.7. ~~<7.7—~~Inspection. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be given two (2) business days prior written Notice before the Board, its designees or the Declarant enter onto the Annexed Lot pursuant to the provisions of Sections 7.9 or 10.6 of the Declaration.

7.8. ~~<7.8—~~Remedies. Paragraph 2 and subparagraphs 7.1, 7.2 and 7.3 above shall not be deemed or construed to prevent:

(i) ~~<(i)—~~the Declarant from (x) bringing an action for damages against the State of Hawaii after it has acquired the fee simple interest in an Annexed Lot, or any of its Transferees thereafter holding the fee simple interest in such Lot, for breach of the restrictions set forth in paragraph 2 above limiting the use of the Annexed Lot to government use, and (y) recovering all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Declarant that are recoverable at law from the State of Hawaii or such Transferees in such an action;

(ii) ~~<(ii)—~~the Board (on behalf of the Association) from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to (a) recover costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association as a result of the State of Hawaii's act or failure or refusal to act in accordance with the Declaration or its failure or refusal to comply with the Rules while it is the Owner of the Annexed Lot and such Annexed Lot is used for government use as set forth in paragraph 2 above, or (b) collect any Assessments, levied against the Annexed Lot pursuant to paragraph 2 during any periods that it is not used for such government use, that are due and unpaid;

(iii) ~~<(iii)—~~the Board (on behalf of the Association), the Declarant or any other Party from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to recover all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association, the Declarant or such Party, as appropriate, that are recoverable at law from the State of Hawaii, with respect to any event or occurrence that would otherwise be subject to Reimbursement or Indemnity under the provisions of the Declaration, but for subparagraphs 7.2 and 7.3 above; ~~<or>~~

(iv) ~~<(iv)—~~the Board (on behalf of the Association), or the Declarant (pursuant to Section 10.8 of the Declaration) from exercising their rights under Sections 5.6(f) of the Declaration ~~<-->~~ ; or

Notwithstanding any provision in this paragraph 7.8 to the contrary, nothing in this Supplemental Declaration or the Declaration, as it may be supplemented or amended from time to time, shall be deemed to waive the sovereign immunity of the State of Hawai'i beyond what is expressly provided in the Constitution, statutes and case law of the State of Hawai'i.

7.9. ~~<7.9—Exempt Property.~~ In addition to the foregoing provisions of this paragraph 7 which apply to the State of Hawaii, Section 9.10 of the Declaration is hereby modified as follows as it applies to all other Owners of an Annexed Lot:

From the Effective Date through completion of construction of an Approved Improvement on the Annexed Lot and during all periods that ~~<an>~~the Annexed Lot is used for government use as set forth in paragraph 2 above, the Owners of the Annexed Lot (other than the State of Hawaii) shall be exempt from paying: (i) all Assessments (including, without limitation, Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration and the initial contribution required under Section 9.2 of the Declaration), except for Special Assessments levied against them pursuant to Sections 9.6(a) and/or 9.6(b) of the Declaration; and (ii) all Reimbursements, except for Reimbursements owed by such Owners to the Association under this Declaration as a result of their failure to pay such Special Assessments.

7.10. ~~<7.10—Reserved Rights of Declarant.~~ For so long as an Annexed Lot is used solely for government use as set forth in paragraph 2 above, the Annexed Lot shall be exempt from the following provisions of the Declaration which reserve certain rights unto the Declarant as set forth therein: (i) Section 10.1, dealing with Water Rights; (ii) Section 10.2, dealing with Easements; and (iii) Section 10.4, dealing with Air Rights. In the event that ~~<an>~~the Annexed Lot ever ceases, at any time and from time to time, to be used solely for government use as set forth in paragraph 2 above, then during all times that the Annexed Lot is not used for such government use, the foregoing provisions of Article X of the Declaration shall automatically and without further action by Declarant or the Owner of the Annexed Lot, apply fully to the Annexed Lot as set forth in Article X of the Declaration.

8. ~~<8.—No Other Effect.~~ Except as expressly provided in paragraphs 1 through 7 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

~~<9.—Amendment. The provisions of this Supplemental Declaration shall not be Amended without the prior Approval of Declarant, which Declarant may withhold in its Sole Discretion.>~~

9. ~~<10.—Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title:<15,790 (for Lots 1344 A-2; 7248; 7249 A; 7249 B; 7258; 7264 and 7265); 410,865; 422,474; 422,475; 422,476; 422,477; 422,478; 422,482; 422,483; 443,350; 446,646; 448,543; 448,544; 448,545 448,546; 457,638; 457,639; 469,988; 475,093; 475,094; 488,409 and 488,410 [subject to revision to include changes prior to execution of this instrument].>~~

422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;  
569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314;  
600,144; 600,145; 600,146; 600,147; 600,148; 600,149; 600,150;  
600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157;  
600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164;  
600,165; 600,166; 600,230 (as to Lot 16013); 600,287; 619,022;  
631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;



674.004; 725.036; 740.833; 780.730; 780.731; 806.009; 806.010;  
806.011; 806.012; 806.013; 806.014; and 807.561.

10. ~~<11.~~ Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

11. ~~<12.~~ Estate's Liability. Any liability which may arise as a consequence of the Consent of Owner. By its execution of this instrument ~~<by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell, and not the personal liability of any trustee or employee of the Estate of James Campbell>~~ Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Annexed Lot, does hereby join in and consent to the Annexation of the Annexed Lot to the Declaration in accordance with the terms and conditions of this instrument and of the Declaration.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Declarant has executed these presents as of the date first above written.

<Declarant:>

<~~TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED,~~  
acting in their fiduciary and not in their individual capacities>

Consent of Owner:

KAPOLEI PROPERTY DEVELOPMENT LLC, a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation, its member manager

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Declarant:

CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited liability company

By James Campbell Company LLC, Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Officer of JCCLLC]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Officer of JCCLLC]

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally  
appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally  
known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn  
or affirmed, did say that such persons executed the foregoing instrument as the free act  
and deed of such persons, and if applicable in the capacity shown, having been duly  
authorized to execute such instrument in such capacity.

Name: \_\_\_\_\_

Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) <SS>ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_<-->, before me personally  
appeared \_\_\_\_\_<-----> and  
\_\_\_\_\_~~<, Trustees under the Will and of the Estate of James Campbell,~~  
~~Deceased>~~, to me personally known~~< to be the persons described in and who~~  
~~severally>~~/proved to me on the basis of satisfactory evidence, who, being by me duly  
sworn or affirmed, did say that such persons executed the foregoing instrument~~<, and~~  
~~severally acknowledged that they executed the same as their>~~ as the free act and deed ~~<as such~~  
~~Trustees>~~of such persons, and if applicable in the capacity shown, having been duly  
authorized to execute such instrument in such capacity.

<----->

\_\_\_\_\_  
Name:\_\_\_\_\_

Notary Public, State of Hawaii

My commission expires:<----->\_\_\_\_\_

## EXHIBIT 1

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT <\_\_\_\_\_,> 80001-C-1, area <13.5> 15.274 acres, as shown on Map \_\_\_\_, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by Certificate of Title No. \_\_\_\_\_, issued to <the Trustees under the Will and of the Estate of James Campbell, Deceased> Kapolei Property Development LLC, a Hawaii limited liability company.

End of Exhibit 1

**EXHIBIT D-1**

**[REVISED EXHIBIT D-1 TO BE ATTACHED]**

**End of Exhibit D-1**

**End of Exhibit D**

Document comparison done by DeltaView on Thursday, October 12, 2006 2:08:20 PM

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Document 2	C:\Windows\Temp\ND\KPD ltr to Keller-Saito-Young (5).doc
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Moved from	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	399
Moved from	0
Moved to	0
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Total changes	869